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ABSTRACT

This background material on laws and the legal system is designed for teachers of citizenship courses at the secondary level. Fifteen topics in the form of questions and answers are discussed by practicing lawyers. Topics include consumer law, criminal law, drugs and alcohol, employment law, juvenile and family courts, landlord and tenant law, and property law. Legal aid, the public defender system, court appointed lawyers, the right to inspection of school records and preservation of their privacy, small claims courts, and wills are also examined. In addition, specific discussion of the courts, environmental law, and insurance law in Oklahoma are included. The appendix provides brief reviews of Oklahoma court decisions pertaining to the juvenile code and of juvenile delinquency and the "unholy alliance." This alliance refers to a mandate by the state legislature that requires the Department of Institutions, Social and Rehabilitative Services to enter into a contract with the Oklahoma Supreme Court to provide intake, probation, and parole services for every county except those with juvenile bureaus. (Author/KC)

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OKLAHOMANS AND THE LAW A RESOURCE BOOK FOR TEACHERS

Prepared by

The Oklahoma Bar Association
Law and Citizenship Committee
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and

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The Oklahoma Bar Association
The Oklahoma Bar Foundation
The Oklahoma Crime Commission

The University of Oklahoma
Southwest Center for Human Relations Studies
Donald J. Hall, Director

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SPECIAL INTRODUCTORY NOTE FOR TEACHERS

The materials in this book are not intended to transform you into classroom lawyers. Rather, this material has been compiled to assist you in your appreciation or understanding of our legal system so that you in turn may help students attain this same appreciation and understanding.

Think back to the time when you were the student rather than the teacher. Were you taught adequately about the legal system of justice? If your experience was similar to that of the majority of students then it is likely that your instruction about our legal system was inadequate. Thus many people of varying professions, age groups, income groups and educational backgrounds are relatively uneducated about this subject which constantly touches us all in many different ways.

In our society we would probably consider it illogical for a teacher not to teach about health because he or she was not a physician. Could it not be considered just as illogical for a teacher not to teach appreciation and understanding of our legal system because he or she is not a lawyer? Just as the teacher need not be a mathematician to teach math, a scientist to teach science, neither does the teacher have to be a lawyer to teach about the law.

Our predecessors in both the legal and teaching professions are jointly to blame for failing to understand the importance of teaching about our system of justice in the classroom. We as lawyers have not encouraged nor assisted your profession in this important task. However, it is not too late to change. We are lawyers, not teachers, but by working together we can help you give a better understanding of our marvelous system of justice. We can tell you about civil law, criminal law, jury trials, rules of evidence, the difference between statutory law and case law and how each changes, and finally, the difference between Municipal Court, District Court, Federal Court, the Oklahoma Supreme Court, and the United States Supreme Court. Hopefully this book will be a beginning.

If you want to know more, or if your students have questions, feel free to call the lawyer in your home town. You will be surprised at his willingness to cooperate. Or, you may contact the Oklahoma Bar Association, Citizenship Education Committee, P. O. Box 53036, Oklahoma City, Oklahoma 73105, 405-524-2365.

Bill V. Wilkinson
Chairman, Citizenship Education Committee

ACKNOWLEDGMENTS

Many persons have contributed enormous amounts of time and talents to this Project. We are deeply appreciative for their efforts.

Without the aid of the Oklahoma Crime Commission, the Oklahoma Bar Foundation, and the Oklahoma Bar Association through its Law and Citizenship Committee chaired by Bill Wilkinson, the Project could not have been started. Members of the Oklahoma Bar Association are to be commended for contributing informative articles on topics covered in this publication. Information about each of these contributors is contained on the reverse side of each topic title page.

The following teachers have assisted in critiquing the materials and suggesting ways to make them more applicable to classroom use. We thank them for their expertise and assistance:

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I am glad to have had a small part in helping to develop this valuable curriculum resource material and am deeply grateful to each person with whom I have had the opportunity to work. Thank you.

Travis Duncan

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CONSUMER LAW
By
John Edward Northcutt

OKLAHOMANS AND THE LAW

About the Author:

John Edward Northcutt earned his B.S. in 1971 and the J.D. (Doctorate of Law) in 1974. Both degrees were awarded by the University of Oklahoma.

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CONSUMER LAW

QUESTION 1. *Does Oklahoma law include laws protecting consumers?*

Yes. Oklahoma has the Consumer Credit Code (Title 14 A, Oklahoma Statutes). It was adopted by the Legislature of the State of Oklahoma on July 1, 1969. It is subject to revision at each annual meeting of the Legislature of the State of Oklahoma. It governs credit sales, home solicitation sales, and all amounts which can be charged pursuant to the sale. It also covers disclosure and advertising relating to consumer credit sales. This will include such items as revolving charge accounts, door to door salesmen, and sale solicitations over the telephone.

High points of the law relating to credit sales are as follows:

a. Home solicitation sales — when there is personal solicitation of a sale at the residence of the buyer, the buyer acquires certain rights. Even though the buyer has entered into a contract and signed the contract, he has until midnight of the third business day, after the day on which he signs the contract to cancel the sale. The notice must be in writing. The only drawback to this is if the cancellation has been made, the seller may retain a cancellation fee of five percent of the cash price of the sale, but not exceeding the amount of the downpayment.

b. The Code also has provisions relating to consumer credit loans. These provisions set forth the amounts which may be charged as interest on consumer loans. It also sets forth the amounts which may be charged as additional charges such as taxes, fees, insurance, etc. Also, limits are placed on the amounts which may be charged as a delinquency charge, should the loan become delinquent.

c. Should the creditor violate any of the provisions relating to disclosure then the consumer is entitled to receive from the creditor (probably as the result of a law suit) twice the amount of the credit service or loan finance charge, but not less than \$100. nor more than \$1,000. plus attorney fees.

d. The right to cancel the transactions similar to the home solicitation sale cancellation applies to consumer loans if the loan will result in a security interest on the borrower's residence. Security interest means that the creditor would have the right to force a sale of the residence in the event that the loan could not be collected. The same rule relating to three day right of cancellation applies to this.

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QUESTION 2. *What laws govern contracting in Oklahoma?*

There are many different areas of the Oklahoma law which cover contracting. Not only does the Consumer Credit Code, previously mentioned, cover contracts, also our Uniform Commercial Code (Title 12A, Oklahoma Statutes) governs different types of contracts which relate not only to warranties but also installments sales, etc. These will be discussed later.

Title 15 of the Oklahoma Statutes relates to contracts. The basic requirements which must be met are that the contract must have an offer and an acceptance. The parties must agree to exactly what they are contracting upon before there can actually be an offer to contract and an acceptance of the offer. The parties must also have the capacity to contract. Generally this means that they must be sane and above the legal age to enter into a contract. The object of the contract must be legal. Any contract which results in an unlawful object is not enforceable. This would mean, not only the result, but any money paid to get the result.

QUESTION 3. *What laws govern minors in contracts?*

Section 13 of Title 15 of the Oklahoma Statutes states that a minor is anyone under the age of 18. Until they reach the age of 18 it is not permissible for a minor to enter into a contract except for things necessary for his support or that of his family.

If a minor should enter into a contract which is not for support of himself or his family, he may disaffirm the contract at any time after it has been entered into. It may also be disaffirmed at any time within one year after he has obtained the age of majority which is 18 years old.

The only other exception relating to a minor entering into a contract other than for support is when the minor is married. A married minor may enter into contracts relating to the sale of real estate (home, land, etc.) and he may also mortgage the real estate.

QUESTION 4. *Does Oklahoma have a truth in lending law?*

Yes. Oklahoma not only has the Consumer Credit Code, which has been previously mentioned, but also certain federal laws are required to be followed in Oklahoma. The main law relating to truth in lending is called Regulation 'Z.' Basically any time a loan is made, certain requirements are imposed upon the person who is loaning the money. By 'person' it normally means a bank, savings and loan, or finance company.

The person lending the money must disclose all expenses relating to the loan. This would include such items as any taxes, any loan closing fees, the interest rate charged, the annual percentage rate of the loan and any other costs to the borrower. These laws are very restrictive and must be followed very precisely.

The Federal Law also has a Consumer Credit Protection Act. It is very similar in many respects to our Consumer Credit Code. They cover much the same items relating to consumer sales and consumer loans and the disclosure which must be made. This law, Regulation 'Z,' and the Consumer Credit Code all impose penalties on the person loaning the money for violating any of the provisions which must be disclosed. These disclosures have been discussed previously.

QUESTION 5. *Does Oklahoma have a law governing unfair sales practices?*

Yes. Title 78, Section 51, of the Oklahoma Statutes is the beginning of the Oklahoma Deceptive Trade Practices Act. This states that a person engages in a deceptive trade practice when in the course of his occupation he: a. passes off goods or services as those of another; or b. knowingly makes a false representation as to the source of sponsorship, approval of certain goods or services; or c. knowingly makes false representation as to his affiliation with another person; or d. knowingly uses deceptive representations or designations as to origin of his goods or services; or e. knowingly makes a false representation as to the characteristics, uses, benefits or quantities of goods or services; or f. knowingly represents that the goods are original or new if they are not; or g. represents that goods are a particular quality when they are not; or h. disparages the goods or services of another by false or misleading representation; or i. advertises goods or services which differ from those offered for sale in an advertisement (bait and switch); or j. advertises goods or services with intent not to supply reasonably expected public demand unless the advertisement discloses a limitation of quantity; or k. makes false or misleading statements of fact concerning the reasons for existence of or amounts of price reductions.

Should a person be damaged by one of the above actions, he may sue in court to prevent this type of defective trade practice from going on. If a court finds that the merchant has engaged in a deceptive practice he will prevent him from doing it in the future. Also, if there have been any dollar damages and attorney fees incurred as a result of the deceptive trade practice, then the consumer may also recover these.

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QUESTION 6. *What special laws govern installment contracts, disclaimers and warranties?*

Oklahoma legislature adopted the Uniform Commercial Code in 1962. It governs warranties, and also disclaimers of warranties. Briefly, a warranty is when the seller (a regular merchant) states as part of the agreement of sale that the goods will conform to what they have promised. This can be by describing the goods, showing a sample of the goods or stating what the goods will be able to do. This warranty is called an express warranty and is normally oral. There are other types of warranties which are called implied warranties. These warranties do not require any written or oral communication between the buyer and the merchant. In order to fit the implied warranty definition, the goods must be merchantable. By merchantable, it means that they must pass without objection in the type of trade for the goods and they are fit for the ordinary purposes for which such goods are used, that they must be adequately packaged, contained, and labeled and they must conform to any promises contained on the label.

There is another implied warranty which is fitness for a particular purpose. If the seller at any time of contracting has reason to know any particular purpose for which the goods are required, and the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, then there arises an implied warranty of fitness for that particular purpose. An example of this would be a person who relies upon an air conditioning man to tell him what size air conditioner he needs for his home. He has also advised the seller of the size of his home. Then if the seller sells him an air conditioner which is much too small for the home, this will trigger the implied warranty of fitness for a particular purpose.

The seller may disclaim any warranties by doing as follows: If it is an implied warranty, he must conspicuously, in writing state that there are no warranties that extend beyond the description on the face hereof. Also, such words as 'sold as is' or 'sold with all faults,' will also disclaim the warranties.

Installment sales contracts are governed under the previously mentioned Commercial Credit Code, the Consumer Credit Protection Act, and Regulation 'Z.' If you are purchasing, for instance, a new refrigerator and are going to pay it out over a period of time, then there must be the disclosures mentioned above made, also the installment contract must state the annual percentage rate, the amount of the monthly payments to be made, the amount of the total finance charge over the term of the loan.

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Frequently, under an installment sales contract, the person who is loaning the money, whether it be a merchant or a lending institution or finance company, will retain a security interest in the goods. By this it is meant that should the borrower fail to pay the amount of each monthly payment, then the seller or lender may repossess the item sold. The interesting point of the law relating to this is if a security interest has been retained in an item and there is less than \$1,000. owed, then the creditor has the following options: He may pick up the goods which have been sold and not paid for without being able to get the money from the borrower, or he may ask for only the money and not be entitled to receive the goods back. This is a very important consumer protection.

QUESTION 7. *What laws govern credit and credit reporting?*

Section 81 of Title 14 of the Oklahoma Statutes relates to Credit Ratings. It basically authorizes a person, firm or corporation to furnish retail merchants the credit rating of any particular person. It also requires the credit rater to furnish a copy of the credit rating to the person being rated. Should a false rating occur, then the person upon whom the false rating was made may sue in court for damages which he can prove resulted to him as a result of the false opinion.

There are also many federal laws which relate to credit and credit reporting. The federal laws are much more detailed and specific than the Oklahoma laws; however, they have generally the same effect.

A new law relating to credit and the extension of credit has been passed by our Federal Government. It is called the Equal Credit Opportunity Act. It is mainly to restrict a person who loans money and the type of information they can obtain from people. Its main emphasis is also to allow a woman to obtain credit based on her credit alone. It has been extremely difficult in the past for a single woman or a divorced woman to obtain credit. Under the new laws, a loan or sale cannot be denied simply because a woman is single or divorced. In other words, if a lender would make the loan to a man with the same income, then the loan must also be made to the woman on her credit alone. This applies not only to single or divorced women, but also to married women who want to establish credit of their own.

QUESTION 8. *What laws pertain to collection practices?*

Once again, there are many different laws which relate to collection procedures. The need for collection procedures comes into effect only when a person who has borrowed money or bought certain items on an installment contract does not make his regular payment. There are many new cases across the nation and in Oklahoma which make it unlawful for a creditor to threaten or harass the borrower.

Should the borrower be sued for the money owed, and a judgment be rendered against him, then there are other collection procedures which come into effect. First, if there is a security interest in behalf of a creditor (security has been previously defined) then the creditor may repossess the goods upon which he had the security interest. He may then after following certain procedures, sell the goods repossessed. Should the goods not bring the amount which the borrower owed, then the creditor may look to the borrower for the money over and above what the goods sold for. This is called a deficiency judgment.

If either a deficiency judgment has been entered or if the creditor did not have a security interest and sued for money only, then the creditor may do what is called a garnishment with the employer of the borrower. This can force the employer to pay up to 25% of the wages of the borrower to the creditor instead of the borrower. This can be continued until the amount of the judgment is paid. Also, if the borrower has any bank accounts or the debt owed from another person may be garnished 100%. This means that should a bank account be in existence and a garnishment be filed at the bank, then the bank account would be paid directly to the creditor.

QUESTION 9. *What is bankruptcy?*

The federal law governs most actions relating to a bankruptcy. Generally speaking a bankruptcy exists when a person is so far in debt that there is no way he can make the payments necessary to pay off the amounts owed. For instance, if a person owed \$1,500. per month in regular monthly payments which will extend for two or three years and has an income of only \$700. per month, obviously he cannot make the monthly payments and soon will be sued by many of his creditors. In order to allow the person to wipe the slate clean, and start over, the federal law allows a person to have all of his debts taken care of. This takes a filing of a Petition in bankruptcy in Federal Court and a hearing in front of a judge to determine whether or not the person is bankrupt. If the person is found to be bankrupt, then he does not have to pay any of the debts which he has listed and presented to the judge. If a security interest has been retained in any of the goods upon which the bankrupt owes money, then the creditor may still pickup the goods. However, he cannot ask for any money from the person once the bankruptcy has been allowed.

If a person owes only slightly more than he makes there are other plans of bankruptcy which can be adopted. There is a wage earners plan which is called a Chapter XIII Bankruptcy. This is where the bankruptcy judge approves a plan of payment of all of the creditors over a longer period of time than the parties originally contracted for.

CONSUMER LAW

This allows the person to pay all of his creditors, all that they are owed, without having to lose all that he has invested.

Also, there are certain items which you can declare as exempt property in the bankruptcy. By exempt, it is meant that even though there is money owed on property you may be able to have these protected in the bankruptcy. The main example of this is your home. You may have all of your other debts cancelled but still ask the judge to set aside your home as exempt property. You would then still have to make the payments on the home; however, you would be able to keep the home.

CRIMINAL LAW
By
Mike Turpen

About the Author:

Michael Craig Turpen received both his Bachelor of Science and Juris Doctorate from the University of Tulsa. He has served as an adjunct professor at Northeastern Oklahoma State University and at Connors State College where he has taught courses in Business Law, American Government, and Criminal Law. Mr. Turpen was recently appointed to the Oklahoma Crime Commission.

Mr. Turpen was selected as the 'Outstanding Young Lawyer of 1975' by the Oklahoma Bar Association. He received the Mayor's Commendation for Outstanding Service to the City of Muskogee in 1976.

Mr. Turpen is chairman of the Special Corrections Committee of the Oklahoma Bar Association, and is state chairman of the 'Volunteers in Corrections' program. He holds membership in the Oklahoma Bar Association, American Bar Association, and many other professional and civic organizations.

CRIMINAL OFFENSES AND PROCEDURE IN OKLAHOMA

I. Introduction

Criminal law and procedure affects each one of us in our everyday lives—as victims when our person or property becomes a target of a lawbreaker; as witnesses when we are subpoenaed to testify as to what we saw or heard; as citizens when more and more of our tax dollars are spent fighting crime; and as defendants when we are charged with a violation of a criminal statute. Regardless of who we are, what we do, how much money we may or may not have or what our race, religion, or color may be, the roof of the law covers us all; it applies to each of us. The law protects us when we are law-abiding, but it punishes those who choose to violate it.

II. Definition of Crime

Crime is one of several forms of anti-social behavior common to all group life. It is a changing concept and what conduct constitutes a criminal offense differs from time to time and place to place, as can be seen by comparing differing attitudes toward cannibalism, human sacrifices, and slavery. In fact, what conduct is unlawful at any given time and place is merely that which is thought to be socially harmful by those in a society who have the power and authority to enact and enforce legislation. The Oklahoma Legislature defines crime as 'an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) Imprisonment; (3) Fine; (4) Removal from office; or (5) Disqualification to hold and enjoy any office of honor, trust, or profit, under this state.'

III. Classification of Crimes

Crimes are traditionally classified as treason, felonies, and misdemeanors. Treason against the United States consists of levying war against our government, or giving our enemies aid and support. Oklahoma Statutes, Title 21, Section 5, defines a felony as 'a crime which is, or may be punishable with death, or by imprisonment in the

State prison.' Examples are murder, rape, robbery, burglary, and grand larceny. Crimes that are not punishable by imprisonment, but punishable by fine or confinement in the local jail are called misdemeanors. Examples are petty larceny, carrying a concealed weapon, and driving while intoxicated.

In addition to classifying crimes as felonies and misdemeanors, Oklahoma law divides criminal statutes into four broad groups by subject matter. The first category is 'Crimes Against Public Justice' and it includes crimes of bribery, corruption, conspiracy, escape and aiding therein, forgery, falsifying evidence, perjury, and nepotism.

The second group is 'Crimes Against the Person' and includes assault and battery, robbery, kidnapping, attempts to kill, duels and challenges, maiming, libel and slander, and homicide. Oklahoma law defines homicide as 'the killing of one human being by another.' Homicide is divided into the following eight statutes: (1) First Degree Murder; (2) Second Degree Murder; (3) First Degree Manslaughter; (4) Second Degree Manslaughter; (5) Excusable Homicide; (6) Justifiable Homicide; (7) Suicide; and (8) Negligent Homicide.

Perhaps the most serious of all crimes is first degree murder. By definition first degree murder is a willful, deliberate, and premeditated killing of another human being with malice aforethought. Oklahoma law also holds that any homicide that is committed during the commission of a robbery with a dangerous weapon, kidnapping, forcible rape, escape from lawful custody, first degree burglary, or first degree arson is automatically considered first degree murder, whether or not the killing was premeditated.

Oklahoma law carves out two forms of possible punishment for a person convicted of first degree murder—life in prison and the death penalty. Once a defendant is convicted (found guilty) by a jury, the jury is instructed by the judge (court) to further deliberate as to punishment. The jury must enumerate certain aggravating factors if they desire to return a sentence of death. Recently the Oklahoma Legislature abolished the electric chair as a means of execution and replaced it with death by drug injection, making Oklahoma and Texas the only two states with that form of execution. If the jury is unable to agree unanimously on the death penalty, Oklahoma law requires the court to dismiss the jury and set punishment at life in prison.

The range of punishment for second degree murder is imprisonment for ten years to life; for first degree manslaughter is imprisonment for not less than four years, or incarceration in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or both fine and imprisonment.

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The third broad category of crimes is 'Crimes Against Public Decency and Morality.' This group includes statutes concerning abandonment and neglect of wife and children, contributing to delinquency of minors, adultery, child stealing, gambling, indecent exposure, obscenity, bigamy, incest, and sodomy.

The fourth group is 'Crimes Against Property' and it includes arson, burglary, embezzlement, extortion, false pretenses, forgery, insurance fraud, injuries to animals, larceny and malicious mischief. The punishment for first degree burglary (an inhabited dwelling house) is imprisonment for seven to twenty years. Oklahoma law defines second degree burglary as: 'Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or breaks into or forcibly opens, any coin operated or vending machine or device with intent to steal any property therein or to commit any felony.' The legislature sets punishment for this section as imprisonment for two to seven years in the state penitentiary.

IV. Parties to Crime

Those persons who commit a crime are called principals. Oklahoma law defines a principal as: 'All persons concerned in the commission of crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense or aid and abet in its commission, though not present.' The law clearly provides that a person who aids and abets in the commission of a crime, although not present when the crime is actually perpetrated, is just as guilty as those who were present and is subject to the same punishment.

Accessories after the fact are those who, knowing a crime has been committed, assist the principal to avoid capture or arrest. Oklahoma law sets punishment for accessories at imprisonment for not more than five years.

V. Arrest, Arraignment, and Preliminary Hearing

Arrest is the lawful act of taking a person into physical custody based on the probable cause belief that a crime has been committed. Arrest

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without probable cause (reasonable grounds) can be considered false imprisonment or false arrest and may create a civil liability possibility. Oklahoma law recognizes that a police officer or citizen may arrest an individual for any misdemeanor or felony crime committed in their presence or for any felony they have reasonable grounds to believe a particular individual committed, though not in the officer or citizen's presence.

At time of arrest, a police officer generally reads an individual his Miranda Rights, which include the right to remain silent and the right to an attorney. Following arrest, the suspect is transported to a police station where he is booked for the charge committed. He is fingerprinted, provided the opportunity to make a phone call, and then placed in jail.

The State initiates criminal proceedings or prosecution against a defendant (an alleged violator) by filing the charges in a document known as an information. The information, prepared by the District Attorney's office, is based on the facts presented to them by police officers and witnesses. The format of the information is *State v. Jane Doe*. Appearing before a judge at preliminary arraignment, the accused is presented a copy of the document. It serves to notify and to inform him of the exact nature of the charges brought against him by the State. During the arraignment the accused may enter a plea of guilty and be immediately sentenced by the Court to certain punishment or he may plead not guilty and request a jury trial.

Once a plea of not guilty is entered, the Court sets a bond to assure the appearance of the accused at a future date for further criminal proceedings. A bond is a certain sum of money that must be posted with the court in cash, real property, or surety before the defendant can be released from custody. The most common procedure for posting a bond is the surety method—this is where a bonding company promises to pay the designated bond amount to the court if the accused does not appear as ordered.

Under Oklahoma law the next scheduled court appearance after the arraignment and before jury trial is the preliminary hearing. During a preliminary hearing the court listens to witnesses presented by the prosecutor (a representative of the district attorney's office) in support of the charges in the information. If the court finds that the evidence shows that a crime was committed and that there is probable cause to believe that the defendant is the one who committed it, the accused is 'bound over' for jury trial.

VI. Basic Rights of a Person Charged with a Crime

The United States Supreme Court and the United States Constitution guarantee the following rights to a person charged with a crime:

1. **Right to Counsel**—Every person charged with a crime has the right to hire a lawyer of his choice. If the crime is serious and a jail sentence is possible, any person who cannot afford a lawyer will have one appointed by the court.

2. **Right to be Notified of the Charge**—Every person has the right to have the criminal charge information or complaint against him specified in clear and understandable language so that he might properly prepare his defense.

3. **Right to Bail**—a bail bond is a contract in which one makes a promise to appear in court. If the conditions are not met, the accused and his bondsman will forfeit a particular sum of money. Every individual, except those accused with first degree murder, has the right to post a bail bond and be released from custody.

4. **Right Against Unreasonable Searches and Seizures**—No one can have his home or place of business searched unless he gives consent or unless a judge issues a search warrant based on sufficient facts to justify the search. The search warrant must be very specific as to the items to be seized and the reason for the search.

5. **Right Against Double Jeopardy**—No person shall be tried twice for the same criminal act.

6. **Right Against Self-Incrimination**—The 5th Amendment provides that no person can be forced to give evidence against himself. An accused has the right to be warned of his right to remain silent and his right to a lawyer prior to making any statement.

7. **Right to be Confronted by Witnesses**—Every accused has the right to be confronted in open court by his accusers. This includes the right to examine and cross-examine the witnesses in accordance with the rules of evidence.

8. **Right to Jury Trial**—Everyone has the right of a trial by jury to determine his guilt or innocence. The verdict must be a unanimous vote by all twelve (or six in a misdemeanor case) jurors.

VII. Trial by Jury

The word 'jury' comes from the French word *jure* which means 'sworn.' The jury gradually developed into an institution to determine facts and resolve disputes. In England trial by jury replaced the practice of trial by ordeal, where guilt or innocence was determined by riding on horseback against one of the kings 'champions' in a jousting contest. If an accused won the battle he was considered innocent of the charges brought against him; however, if the accused died during the ordeal he was considered guilty.

Today every person accused of a crime has the right of trial by jury except where the maximum possible penalty does not exceed a fine of \$100.

All defendants are presumed to be innocent until such time as their guilt is established beyond a reasonable doubt by the State.

In order for a jury to convict (find guilt beyond a reasonable doubt) or acquit (not guilty), the verdict must be unanimous. If the jury is unable to agree, the judge will declare a mistrial and the case will be retried just as if the first trial had never occurred.

The function of the jury is to listen to the facts and arrive at a verdict. The jurors can accept or reject any part of a witness's testimony as they see fit. It is the function of the trial judge to instruct the jury as to the law that applies in the case. A criminal trial begins with *voir dire* (the selection of a jury) followed by opening statements and presentation of evidence. The State puts on its case, followed by the defendant's case, if he chooses to submit witnesses. Defenses such as insanity and self-defense may be offered for the jury's consideration. The State and the defendant can offer rebuttal testimony, if proper. After the evidence is closed, the judge prepares a written charge on the law and this is read to the jury. After the lawyers make their closing arguments, the jury retires to deliberate and arrive at a verdict.

Jurors in Oklahoma are chosen by chance from all of those residents of a county that are registered to vote. When called for jury duty one is required to serve unless he appears before a judge and provides a reasonable excuse for being unable to participate.

VIII. Probation, Parole, and Pardon

These words are confused by many people. All three of these situations occur after a person has been judged guilty of a crime, that is,

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after he has been convicted. A person is convicted after a plea of guilty, or after a finding of guilt during a trial by a judge or a jury.

Once a person has been found guilty, the next step is to decide on his punishment. In certain cases, usually for a first offense, or where common sense says that the guilty person has learned his lesson and will not go out and commit another crime, the person may be placed on probation. He is given time to serve in jail or the penitentiary, but does not actually have to go to prison as long as he leads a law-abiding life, checks periodically with his probation officer, and obeys any of the other conditions of the probation, such as restitution to the victim. If a person on probation gets into any further trouble, violates the terms or commits another crime, his probation can be immediately revoked, which means he will begin serving the sentence which he was originally given.

Parole is different. The convicted person is given a certain number of years to serve in prison. Once there, he may be paroled (or released from prison) after serving one-fourth of his sentence or in some cases even earlier. Parole is not a right, but a reward for good behavior and is granted by the Board of Pardons and Paroles after a recommendation by the Prison Committee. A complete investigation is made on every case, and no offender is paroled if he might be harmful to the community.

Once out on parole, a person is still in a test situation similar to probation, and if he gets into further trouble or fails to meet the conditions of the parole, his parole is revoked.

Pardon is a grant of mercy by the governor after recommendation by the Board of Pardons and Paroles. This may involve a full pardon and restoration of civil rights or a conditional pardon.

DRUGS AND ALCOHOL

By

Thomas S. Walker

About the Author:

Thomas S. Waiker is Special District Judge for Carter County. He holds degrees from Phillips University (B.A.) and the University of Oklahoma (J.D.).

Judge Walker is a member of the Oklahoma Bar Association; Carter County Bar Association; American Judicature Society; American Judges Association; and Oklahoma Trial Lawyers Association.

Judge Walker was recognized in 1975 as the Outstanding Young Alumnus by Phillips University Alumni Association; Outstanding Soldier, Fourth U.S. Army, 1969; and Recipient of George Washington Honor Medal from Freedoms Foundation of Valley Forge, 1969.

He is a Captain in the Oklahoma Army National Guard.

DRUGS AND ALCOHOL

QUESTION 1. *What are four features of the Uniform Controlled Dangerous Substance Act?*

The bulk of Oklahoma's law relating to the possession, use and sale of drugs are contained in the Uniform Controlled Dangerous Substances Act, which is found in Title 63 of the Oklahoma Statutes. This same set of laws has been enacted in substantially the same form by over 40 other states. It is an attempt to provide a comprehensive enactment covering the subject of drugs and make that enactment fairly uniform across the United States. As enacted in Oklahoma, it has the following significant features:

- a. Establishes the Oklahoma State Bureau of Narcotics and Dangerous Drugs;
- b. Divides into schedules all controlled dangerous substances according to a fixed scheme;
- c. Prohibits the possession or sale of controlled dangerous substances and provides a range of penalties for violators;
- d. Makes special provisions for the enforcement of the act over and above the general criminal laws of the state.

QUESTION 2. *What agency is charged with enforcing the Oklahoma drug laws?*

The agency charged with primary responsibility for the enforcement of the state's drug laws is the Bureau of Narcotics and Dangerous Drugs (BNDD). This agency is headed by a director appointed by the Governor and serves at his pleasure. This means that the Legislature need not confirm the appointment. The person who is appointed director must have at least a bachelor's degree from an accredited college or university and at least five years of law enforcement experience.

QUESTION 3. *What qualifications are required of an investigative officer of the Bureau of Narcotics and Dangerous Drugs?*

The investigative officers of the BNDD are called agents and special agents.

All applicants for the position of agent must be at least 21 years of age and meet the following educational and experience standards:

- a. Sixty credit hours from an accredited college or university and two years of law enforcement experience; or
- b. A bachelor's degree; or
- c. At least four years of drug enforcement experience. Upon being

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appointed, each agent must serve in a probationary status for one year. The director of the BNDD may also appoint special agents to handle specific investigatory assignments on a case-by-case basis. The educational and experience requirements do not apply to these special agents.

QUESTION 4. *What are the characteristics of Schedule I drugs?*

All drugs which are classified as controlled dangerous substances are placed into categories called 'schedules.' The general criteria used in determining the classification or schedule of a particular substance are potential for abuse and accepted medical use in the United States.

Schedule I characteristics include:

- a. High potential for abuse; and
- b. No accepted medical use in the United States or lack of accepted safety for use under medical supervision.

QUESTION 5. *What are some examples of a Schedule I drug?*

This schedule contains most of what are termed 'hard drugs.' It includes heroin, LSD, mescaline, morphine and marijuana.

QUESTION 6. *What are the characteristics of Schedule II drugs?*

It should be noted that Schedule II characteristics are:

- a. High potential for abuse;
- b. Currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and
- c. The abuse of the substance may lead to severe psychic or physical dependence.

QUESTION 7. *What are some examples of a Schedule II drug?*

It includes opium, cocaine, amphetamines, methamphetamines, phenmetrazine (preludin), methadone and methaqualone (quaalude).

QUESTION 8. *What are the characteristics of Schedule III drugs?*

The characteristics of Schedule III drugs are:

- a. A potential for abuse less than the substances listed in Schedules I and II;
- b. Currently accepted medical use in treatment in the United States; and
- c. Abuse may lead to moderate or low physical dependence or high psychological dependence.

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QUESTION 9. *What are some examples of Schedule III drugs?*

Included in this schedule are drugs which are compounds containing small amounts of opium, codeine and morphine. It also includes PCP which is the popular name for phencyclidine, a tranquilizer used on animals.

QUESTION 10. *What are the characteristics of Schedule IV drugs?*

Schedule IV contains drugs with the following characteristics:

- a. Low potential for abuse relative to the substances listed in Schedule III;
- b. Currently accepted medical use in treatment in the United States; and
- c. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.

QUESTION 11. *What are some examples of a Schedule IV drug?*

The more common drugs in Schedule IV are chloral hydrate, diazepam, barbitol and phenobarbitol.

QUESTION 12. *What are the characteristics of Schedule V drugs?*

Schedule V drug characteristics are:

- a. Low potential for abuse relative to the controlled substances listed in Schedule IV;
- b. Currently accepted medical use in treatment in the United States; and
- c. Limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.

QUESTION 13. *What are some examples of a Schedule V drug?*

Schedule V drugs are generally prescriptive medications which contain quantities of opium, codeine or morphine which are smaller than those listed in Schedule III.

As can be seen by looking at the drugs contained in the various schedules and the characteristics of those schedules, most controlled dangerous substances are 'legal' in the sense that they have an accepted medical use. In addition most can be obtained by prescription. It is when they are used for non-medical or non-scientific purposes, that the drugs become illegal. However, realizing the ease with which scientific

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or medical use can be claimed, the Controlled Dangerous Substances Act contains strict licensing provisions to govern these types of uses.

QUESTION 14. *What are the penalties imposed for violation of the UCDSA for the following: a. Manufacturing and distribution, b. possession, c. sale?*

The range of penalties for the various offenses relating to drug varies according to the schedule involved. The manufacture or distribution of LSD or any Schedule I or II drug which is also classified as a narcotic carries a minimum penalty of five years imprisonment, and a maximum of twenty years. In addition a fine of up to \$20,000 must be imposed. For all other Schedule I and II drugs as well as those in Schedule III and IV, the penalty is from two to ten years and a fine up to \$5,000. For those contained in Schedule V, the penalty is up to five years and up to a \$1,000 fine. For any person over 21 who sells or gives one of these drugs to one under 18, the penalty is doubled.

Simple possession of most Schedule I and II substances carries a term of imprisonment of from two to ten years, with a second offense being punishable by from four to twenty years. First offense possession of terms listed in Schedule III, IV, or V or marijuana is a misdemeanor and carries a maximum penalty of one year of confinement. However, a second or subsequent offense is a felony punishable by not less than two years nor more than ten years. Any person convicted of attempting to obtain a controlled substance by fraud or deceit or by a forged or altered prescription can be imprisoned for up to ten years.

In addition to the criminal penalty involved, any raw material, product or equipment which is used for the illegal manufacture, sale or distribution of a controlled dangerous substance is subject to forfeiture to the state. This specifically includes any type of motor vehicle, aircraft, or boat in which a drug is illegally transported regardless of the amount. When, for example, an automobile is forfeited, an application is made to the court for a hearing. If the judge finds that the automobile was used for the illegal transportation of a drug, he can order the sheriff to impound it and sell it at public auction with the proceeds going to the county treasury. He may, however, permit the law enforcement agency which seized the automobile to retain it for official use.

The Oklahoma law concerning the sale of beverages with an alcoholic content can generally be divided into two categories, liquor and beer. The Oklahoma Alcoholic Beverage Control Act governs the manufacture and sale of what the act refers to as 'alcoholic beverages,' a term which includes liquor in all forms, wine and beer with an

DRUGS AND ALCOHOL

alcoholic content in excess of 3.2% by weight. It does not cover beer, malt liquor or ale which has an alcoholic content of less than 3.2% by weight. To save confusion, all beverages in the first category will be referred to as liquor and those in the second will be referred to as beer.

The manufacture and sale of both liquor and beer is strictly controlled and licensed by the state. The agency charged with primary responsibility for enforcing the state's liquor laws is the Alcohol Beverage Control Board (ABC). The ABC Board has the responsibility to issue the required licenses, conduct investigations, make inspections and assist local authorities in enforcing the various liquor laws.

The retail sale of liquor is strictly limited to what are called package stores. These are privately owned retail establishments which have as their only business the sale of liquor. The sale of any other goods or services in a package store is strictly forbidden. The minimum age at which liquor can be legally purchased is 21.

Private clubs at which liquor is served are not licensed by the State nor prohibited by State law. Any such licensing is done on a local level. It must be remembered in conjunction with private clubs, that liquor may only be served, not sold. Each patron must bring his own supply of beverage and the club may only supply that with which it is mixed and the service of mixing. This restriction applies to all types of private clubs, including those owned by individuals, fraternal organizations, and what are commonly called country clubs.

Business establishments which sell beer must obtain a license from the district court prior to doing business. This is in addition to any local licenses which may also be required. If beer is purchased for consumption on the premises, the minimum age is 21. However, if the purchase is from an establishment which sells for consumption off the premises; i.e. a grocery store, the minimum age is 18.

QUESTION 15: *What are the penalties for driving under the influence, driving while impaired and public drunk?*

Driving under the influence, driving while impaired and public drunk are probably the most common alcohol related offenses. As the name implies, driving under the influence, means essentially operating a motor vehicle when one's ability to do so is substantially affected by the consumption of alcohol. The first conviction of this offense is a misdemeanor which carries a maximum fine of \$500. and from ten days to one year in the county jail. In addition, the Department of Public Safety must revoke the license of any driver so convicted for a period of six months. A second or subsequent conviction is a felony and carries a minimum of one and a maximum of five years in the penitentiary.

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Driving while impaired is a lesser offense than driving under the influence. It means basically that one is operating a motor vehicle while his ability to do so is impaired by the consumption of alcohol. A first conviction carries a fine of from \$100. to \$300., with a second or subsequent conviction being from \$300. to \$500. The Department of Public Safety may suspend for three months the license of any person convicted of driving while impaired. A second conviction carries a six-month suspension.

The offense of public drunk, as its name implies, means being intoxicated in a place open to the public. Conviction is a misdemeanor and carries a fine of from \$10. to \$100. or from five to thirty days in jail or both.

QUESTION 16: *What is the difference between driving under the influence and driving while impaired?*

As explained above, these two charges are related as to subject matter, and vary only in the severity of the penalty imposed, and, of course, the degree of intoxication of the defendant. Alcohol is absorbed into the bloodstream of a person who has been drinking, and two standard tests are used to determine the amount of blood alcohol content, a blood test and a breathalyzer test.

If either test shows the defendant's blood alcohol content to be greater than .1%, then that person is presumed by law to be under the influence of alcohol, and if found driving a car in that condition, will be charged with driving under the influence. If the person's blood alcohol content is shown to be .09% or less, then that person is said to be impaired, and if found driving in that condition will be charged with the lesser but similar offense of driving while impaired.

When a person is stopped by a police officer for one of these offenses, he has the right to choose either the breath test or the blood test. If he chooses the blood test, he also has the right to demand that a second blood sample be drawn and given to him, so that an independent analysis might be made. He does not have the right to consult with a lawyer, or anybody else prior to electing between these two tests. If the person refuses to submit to either test, the police are required to respect his wishes, but the Department of Public Safety will then automatically suspend that person's driver's license, whether he is convicted of an offense or not.

A defendant charged with public drunk is not entitled to demand either of the above tests.

EMPLOYMENT LAW

By

J. Terry Johnson.

About The Author:

J. Terry Johnson, a native of Springfield, Missouri, was named president of Oklahoma Christian College in 1974. He holds the B.A. degree from Oklahoma Christian College and is a graduate of the Southern Methodist University College of Law. He has been awarded numerous professional and civic honors, including being named Outstanding Young Man of the Year for 1974 by the Oklahoma City Junior Chamber of Commerce.

A member of the Oklahoma Bar Association, Johnson is currently serving on its Citizenship Education Committee and Law Schools Committee. He is a member of the Advisory Board of the McGee Eye Institute; the Advisory Council for Foundation for American Agriculture; the Board of Directors of the Freedoms Foundation in Valley Forge, Pennsylvania; and is Chairman of the Oklahoma Independent College Foundation. He is also a member of the Oklahoma City Rotary Club and the Oklahoma City Economic Club.

EMPLOYMENT LAW

Few activities have the same daily impact upon our lives as those related to employment. The law, in response to this impact, is constantly changing both by statute and by court decision. The myriad details that accompany the general field of employment law do not lend themselves to a brief summary. There are, however, two basic areas that lend themselves to such treatment: General employment practices, and employment-related insurance.

I. Employment Practices

Pursuant to abuses of the Industrial Revolution, all states have developed safeguards for protection of the laborer. Oklahoma's response came on November 16, 1907, when the office of the Commissioner of Labor was created. Through the years this has been an elective position, but on January 8, 1979, the office of Commissioner became an Executive appointment.

QUESTION 1. *Where in the Oklahoma Statutes are the minimum standards all employers must follow?*

Labor Law in Oklahoma is found primarily in Title 40 of the 1971 Oklahoma Statutes. The Statutes, at great length, prescribe minimum standards to be followed by all employers for the protection of the laborer. These measures are aided by federal law, additional labor union requirements, and industry standards that either highlight or extend the standards of Title 40. While not a predominant theme, the young employee is the object of a great many of these standards.

Generally, protection is assured from dangerous working conditions, excessively long work periods, the use of minors and others in unsuitable occupations, discriminatory practices, and negligence on the part of the employer. Specific attention is given to relief in the event of the breach of the requirements.

QUESTION 2. *Are there provisions in the Oklahoma Statutes prohibiting minors from unsuitable employment?*

It is interesting to note that Oklahoma does not have a minimum age statute and is only one of three states without such a provision. There are, nevertheless, several standards that would preclude minors, as a class, from participation in unsuitable employment. For example:

....It is a violation of Title 40, Section 74 of the 1971 Oklahoma

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Statutes for any child under 16 to be employed in various specified areas of employment if the same child cannot read and write proficiently in the English language, unless the same child has attended school during the previous compulsory period.

....In this same regard, it is a violation of Title 70, Section 10—105 of the 1971 Oklahoma Statutes for children between the ages of 7 and 18 to not be in regular public or private school attendance. This does not apply if the individual has graduated from high school or is married and under the age of 18.

Under State law employment certificates must be obtained and kept on file by the employer for all minors under 18. Certificates are required for all employed minors, except for those employed in domestic service, agriculture, as newspaper carriers, and in some instances, where the principal employer is also a parent.

These certificates are an employer's only protection from alleged abuses of the child labor laws. The certificates are ample proof of age. They are issued by the county superintendent of schools or his designee. A certificate:

....will not be issued to any child under 14 years of age to work in a factory, a factory workshop, a theatre, a bowling alley, a pool hall or steam laundry. (Title 40 Oklahoma Statutes Section 71)

....will not be issued to any child under 15 years of age to work in any occupation which is injurious to health or morals, or especially hazardous to life or limb. (Oklahoma Constitution Article 23 Section 3)

....will not be issued to any boy under 16 or girl under 18 to work in a factory, factory workshop, theatre, bowling alley, pool hall, or steam laundry between the hours of 6 p.m. and 7 a.m. Children who have reached their fifteenth birthday may work in motion picture theatres as ushers, cashiers, or in concession stands until 11 p.m. (Title 40 Oklahoma Statutes Section 76)

....will not be issued to any child under 16 years of age to work at or around dangerous machinery of any kind, including passenger or freight elevators. (Title 40 Oklahoma Statutes Section 72)

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....will not be issued to any child under 16 years of age to work more than eight hours in any one day, or more than 48 hours in any one week. (Title 40 Oklahoma Statutes Section 75)

While the aforementioned provisions are not an exhaustive rendering of statutes pertaining to the youthful employee, they are representative of the careful legislative attitude toward employment of minors.

As a sampling of other Title 40 provisions, private employment agencies are prohibited from charging excessive finder's fees, (Title 40 Oklahoma Statutes Section 54). Employers may not bring employees into their place of business under false pretenses, (Title 40 Oklahoma Statutes Section 170). The Legislature has further developed provisions for regular pay periods, rules governing termination, protection from blacklisting, and under Title 40 Oklahoma Statutes Sections 197.1 — 198.1 a minimum wage.

QUESTION 3. *How may a person qualify for a position covered by the State Merit System?*

Under the heading of employment practices, mention must be made of the Oklahoma system of merit employment. In addition to the laws briefly mentioned in the prior section, those employed under the merit system enjoy the same protections, as well as those provided by the State of Oklahoma as an employer.

There are 51 agencies within the State's merit system of personnel employment. Employees are chosen from those who have taken competitive examinations for original and promotional employment. The merit system is governed by the State Personnel Board and the director of the State Personnel Board.

The theory behind such a system is to provide a continuous pool of qualified individuals for the purpose of filling State positions as they become available.

Public announcement of entrance examinations must be posted at least 14 days in advance of the closing date. Notices are posted throughout the State in whatever manner the Board deems most expedient. The announcement will state the duties and salaries of the positions available as well as minimum standards required of the applicants.

An agency may require standards as are necessary to fulfill the position, but such standards must be in compliance with the guidelines of

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the Federal Civil Service Commission and the Federal Equal Opportunity Commission and in accordance with the Oklahoma Attorney General's Opinion Number 75-254.

In addition to the examination for original employment, provision is made in Title 74 of the Oklahoma Statutes for promotional examinations and for continuous open examinations for those positions that have a frequent turnover.

Not all State employees are under the merit system. If the budgetary source is federal, if the position is by executive appointment, by statute or title, the position is not under the merit system. These positions are listed as exempt or unclassified.

QUESTION 4. *Is there a minimum wage law covering part time employees?*

Part time employees, with specific exceptions, are paid the minimum wage or more just the same as full time employees.

Section 14 of the Federal Employment Regulations provides for less than minimum wage for full time students and persons performing certain tasks in connection with learning on the job.

Small businesses not involved in interstate commerce are also exempted from minimum wage requirements. A small business is considered as one with less than \$250,000. per year in sales and services.

Oklahoma's labor laws cover some occupations not covered by federal regulations. The Oklahoma Department of Labor has a brochure briefly describing Oklahoma's laws. Teachers are encouraged to write for the brochure and to call the department for clarification of laws. The address is:

Department of Labor
Room 118, State Capitol Building
Oklahoma City, Oklahoma 73105
Phone: (405) 521—2461

II. Employment-Related Insurance

A. Workmen's Compensation

In 1908 the first workmen's compensation law was enacted to provide benefits for civil employees of the federal government. Three years later ten states had enacted laws for their own jurisdictions, and by 1920, 42 states had enacted compensatory laws. Today all 50 states and the U.S. Territories have effective laws to aid the injured worker.

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QUESTION 5. *What is the principal purpose of workmen's compensation law in Oklahoma?*

The principal purpose of workmen's compensation law is to eliminate the difficulty in recovering for damages sustained in the course of employment. Prior to the creation of these laws, an employee's only recourse was to sue the employer and attempt to prove negligence. Even if the suit was successful, the damage award was, at best, uncertain.

Under the current compensatory program, workers, if covered by the law, are assured of prompt payment according to a precise schedule. Under these laws the expense of work related injuries is considered a part of the cost of enterprise.

QUESTION 6. *Which of the Oklahoma Statutes deals with Worker's Compensation cases?*

Most compensation laws base the award for damage sustained upon a percentage of the employee's wage rate for a specified period of time dependent upon the nature of the injury. For example:

Permanent Total Disability — 66 2/3% of the employee's salary will be paid for the duration of the disability, but not to exceed \$75. per week (as of the time this article was submitted);

Temporary Total Disability — 66 2/3% of the employee's salary will be paid for the duration of the disability, not to exceed 300 weeks and further, not to exceed 66 2/3% of the State's average weekly wage;

Permanent Partial Disability — Example: loss of thumb. 66 2/3% of the employee's salary for 60 weeks, but not to exceed \$60. per week (as of the time this article was submitted).

This schedule is set forth in detail in Title 85 of the Oklahoma Statutes, Section 22 as amended, effective, July, 1978.

During the 1976-77 legislative term, Title 85 of the Oklahoma Statutes was revised. Title 85 covers generally the topic of Worker's Compensation. The newly amended provisions can be found as House Bill Number 1228, which was passed by the State House and Senate on June 6 and 7, 1977, respectively.

The State Industrial Court system will soon become known as the Worker's Compensation Court. The Court exists as an entity to hear claims submitted by injured workers. If the employee and his employer are unable to arrive at an agreement as to damage compensation, one

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of the seven judges of the Court is available for a hearing and determination. The Court deals solely with claims arising out of disputes under the Worker's Compensation Act.

Under the new Act, Employers are obliged to maintain insurance coverage for employees, for work-related injuries or occupational diseases. The burden of maintaining such insurance is the employer's alone; employees do not contribute to the cost of this insurance.

Assuming a typical work-related accident, the first step taken would be to inform the employer and the State Administrator of Worker's Compensation. The Administrator retains jurisdiction until the issue is resolved. Upon notification of a controverted issue, the Administrator will determine a hearing date in the appropriate judicial district and will appoint a judge to sit, without the aid of a jury, and render a decision.

QUESTION 7. *Are appeals possible in Workmen's Compensation cases?*

Parties wishing to appeal the decision rendered may bring the matter to the Court sitting *en banc*. The Court *en banc* will consist of three judges that have not heard the issue previously. They may modify, reverse or affirm the decision. Further appeals may be made to the State Supreme Court.

B. Unemployment Compensation

QUESTION 8. *How long may one receive unemployment compensation benefits?*

Unemployment compensation, in effect, is wage insurance. This form of insurance was first paid in Oklahoma in 1938. The purpose of unemployment compensation is to provide some form of income to the unemployed for a period not to exceed 26 weeks.

QUESTION 9. *Does the employee pay anything toward unemployment compensation insurance?*

No; it is the worker's former employer that has provided the funds from which this insurance benefit is paid. The individual does not contribute to nor pay for any portion of the funds.

QUESTION 10. *How can an employee receive unemployment benefits?*

Application for unemployment compensation does not insure that

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the worker will be accepted for compensation. It is possible that the individual has failed to comply with the specified provisions for eligibility. It is further possible to be penalized for any false statements or misrepresentations and to be held liable for funds paid without merit.

To be eligible for compensation the worker:

- a. Must be totally or partially unemployed.
- b. Must file a claim in writing with a State Employment Service Office for unemployment compensation.
- c. Must register for work with the Oklahoma State Employment Service.
- d. Must make his own personal effort to obtain work.
- e. Must be physically able to work.
- f. Must be ready, willing and available to take suitable work, at any time.
- g. Must serve a valid one week waiting period after filing a first claim for which no benefits are paid.
- h. Must have been paid wages of at least \$1,000. during a base period and in addition the total base period wages must equal or exceed one and one-half times the high calendar quarter wages within the base period.
- i. Must have earnings after the beginning date of a previous benefit year equal or in excess of ten times the weekly benefit amount in a new benefit year. Documented proof of such earnings will be required.
- j. Must not have contracted, in writing, to make services available to an employer as a professional athlete because a professional athlete is ineligible in Oklahoma with respect to such periods as are covered by contract.

Compensation is computed on the basis of one twenty-fifth of the worker's highest wage rate paid during a specified three month period. This compensation is not to exceed 55 % of the average wages paid in Oklahoma in the preceding calendar year. For example: If in January—March an individual was paid a total of \$1,250., his weekly unemployment benefit would be \$50. as long as this did not exceed 55% of the weekly wages earned by those employed in Oklahoma in the preceding calendar year.

Unemployment benefits will terminate when the benefit period lapses, when employment is secured, or when the worker is no longer eligible.

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QUESTION 11. *Are young, part time workers and migrant workers covered by unemployment compensation?*

Since it is the employer who maintains unemployment insurance, these types of workers are eligible for unemployment compensation only where their employer has elected to obtain the insurance.

For further information call the nearest office of the Oklahoma Employment Security Commission, or the State Office in Oklahoma City.

Phone: Employment Service (405) 521—2801

Unemployment Compensation (405) 521—3784

Conclusion

In no way is this overview prepared to encompass all facets of labor related law. For more information the Oklahoma Statutes should be consulted and, as well, the more recent Oklahoma Statutes Annotated.

The State Library and the Secretary of State's Office have copies of the revised Worker's Compensation law. The office of the Commissioner of Labor, the Employment Security Commission, and the State Industrial Court are very informative and valuable sources for additional study materials.

FAMILY LAW
By
Benjamin E. Stockwell

About The Author:

Mr. Stockwell was graduated from the University of Oklahoma in 1952 with a Bachelor of Arts, having majored in History and minored in Political Science. He thereafter received his Bachelor of Law from the University of Oklahoma in 1956 and was admitted to the practice of law in Oklahoma in February of 1956. Mr. Stockwell was engaged in private practice in Oklahoma City for four years and then became Legal Advisor to the Office of the President of the University of Oklahoma and also served as an Assistant Professor of Law at the University of Oklahoma College of Law until July of 1961 when he re-established his private practice in Norman, Oklahoma where he is presently located.

Mr. Stockwell is a past President of the Cleveland County Bar Association, a past Vice-President of the Oklahoma Bar Association and past Chairman of the Oklahoma Bar Association Special Committee on Implementation of Judicial Reform Amendments. Mr. Stockwell has also served on the Oklahoma Bar Association Administration of Justice Committee, Criminal Law Committee, Legal Aid Committee and Legal Internship Committee.

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QUESTION 1. *Is there a special court where family law cases are held?*

No. Beginning January 13, 1969, the jurisdiction of the Family Courts was combined, along with Superior Courts, County Courts, Common Pleas Courts, Juvenile and Childrens Courts (to mention a few) into a single court system of general jurisdiction, the District Courts. 20 O.S. §91.1 (1971). Under this Court system all cases dealing with juvenile, family or domestic matters will carry the case number JFD— for convenience of identification by the clerk and the Court personnel.

QUESTION 2. *As defined by law, what is marriage?*

According to 43 O.S. §1 (1971) marriage is a personal relation arising out of a civil contract to which the consent of parties legally competent of contracting and of entering into is necessary. Black's Law Dictionary defines marriage as the civil status, condition, or relation of one man and one woman united in law for life, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex.

QUESTION 3. *Must a couple obtain a marriage license and have a wedding ceremony to legalize a marriage contract?*

According to statute, all marriages must be contracted by a formal ceremony performed or solemnized before a judge or an ordained or authorized priest, preacher, or minister of the gospel. 43 O.S. §7 (1971). A marriage license is necessary. 43 O.S. §5 (1971).

However, notwithstanding the above statutory requirements, a common law marriage is recognized in Oklahoma. In order for there to be a common law marriage it is necessary that there be actual and mutual agreement to enter into a marital relationship, permanent and exclusive of all others, between parties capable of making such a contract. Where the parties hold themselves out openly and notoriously as husband and wife, such an agreement will be presumed. In addition, the agreement must be consummated by cohabitation as man and wife, or mutual assumption openly of marital duties.

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QUESTION 4. *What legal requirements such as age, place of residence, sex, race, and intelligence, etc., must be met for persons to legally apply for a marriage license?*

Any unmarried person of the age of 18 years or upwards may marry if capable of contracting and consenting to marriage with a person of the opposite sex. Persons between the age of 16 and 18 are prohibited from marrying except upon the consent of parent or guardian. Persons under the age of 16 are expressly forbidden to marry, except that upon Court Order such persons may marry when the unmarried female is pregnant or has given birth to an illegitimate child.

There are no restrictions on race, though until 1969 if a person of African descent married a person not of African descent, both parties could be found guilty of a felony and fined up to \$500., and be imprisoned for up to 5 years. There is no residence requirement. 43 O.S. §3 (1971).

QUESTION 5. *Is an Oklahoma marriage license honored in other states?*

An Oklahoma marriage license is valid in any county within the State. With respect to a marriage entered into in Oklahoma, if it is valid in Oklahoma it is then honored in every state.

QUESTION 6. *What are the legal obligations of an unmarried parent to an illegitimate child?*

The father of an illegitimate child is liable for the support and education of the child to the same extent as the father of a child born in wedlock. 10 O.S. §83 (1971). Also, the father of the illegitimate child is liable for the reasonable expenses of the mother during the period of her pregnancy, confinement and recovery, whether or not the child is born alive. 10 O.S. §84 (1971).

QUESTION 7. *When is a court order necessary for a couple to get married?*

A Court Order is necessary for a couple to get married when one or both are under the age of 16. 43 O.S. §3 (1971).

One of the requirements for a marriage license is that a certificate or affidavit from a medical doctor licensed to practice within the State of Oklahoma be filed with the court clerk, stating that each party has been given a standard serological examination for the discovery of syphilis,

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which examination was made not more than 30 days prior to the date of applying for the license. If for some emergency, or other good cause the parties wish to dispense with this requirement, or extend the time between the date of application and the date of examination, a Court Order is also required. 43 O.S. §32 (1971).

QUESTION 8. *In regard to each of the following, what responsibilities are incurred by entering into a contract of marriage?*

- a. the spouses' debts
- b. providing food, shelter, and clothing for children and spouse

Neither the husband nor the wife, as such, is answerable for the debts of the other. Nor is the separate property of one available to the creditors of the other, each party being liable for his own debts whether contracted before or after marriage. 32 O.S. §9 (1971).

The husband is liable for the support of the wife, 32 O.S. §10 (1971), and as mentioned before, a father is always liable for the support of both his legitimate and illegitimate children until they reach the age of 18.

QUESTION 9. *What are parental responsibilities in regard to their children?*

- a. education
- b. damages through juvenile crimes
- c. physical and mental health

Parents are obligated to provide for the physical and mental well being of their children which includes education, among other things. Neither parent nor child is answerable, as such, for the tortious conduct of the other unless the child is acting as the agent of the parent, though the state or any political subdivision thereof is entitled to recover up to \$1,500. in damages from the parents of any minor who maliciously or willfully destroys property belonging to the state or political subdivision. 23 O.S. §10 (1971). Tortious comes from the word tort which is simply the legal term for a claim against another party which does not arise from contract. For example, a car accident would be a tort, assault and battery would be a tort, and slander would be a tort.

Part of the parents' obligation for support requires that the child be provided with proper medical care when necessary. Treatment by spiritual means alone through prayer, in accordance with the tenets and

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practice of a recognized church or religious denomination is legally sufficient to fulfill this requirement. 10 O.S. §1130 (1971).

QUESTION 10. *Are parents who abuse their children legally responsible for damages/injuries caused to the children?*

Absolutely. Though cases decided by Oklahoma's Appellate Courts have consistently held that a child may not recover damages for personal injury from his parent based on the parent's ordinary negligence, there is no prohibition of actions by children to recover for injuries as the result of their parent's intentional and malicious acts. In addition, a parent who abuses his child faces criminal liability.

It is a felony to willfully or maliciously injure, torture, maim, or use unreasonable force upon a child; a conviction of such is punishable by imprisonment for up to 10 years and by a fine of up to \$500. 21 O.S. §43 (1971).

QUESTION 11. *How do parents lose their rights to control their children?*

A parent may either voluntarily relinquish control and custody of his child, or his parental rights may be involuntarily terminated by judicial proceedings.

QUESTION 12. *Under the law, what are some specific acts included as descriptions of child abuse?*

Under 21 O.S. §853 (1971) child abuse includes causing malicious injury, torturing, maiming, or using unreasonable force upon a child under the age of 18.

QUESTION 13. *What is a minor child's legal obligation to obey his parents? and QUESTION 14. What legal action may be taken by a parent when his child will not obey him? and QUESTION 15. What control does a parent legally have over a minor child's income and property? and QUESTION 16. What is a child's legal obligation to obey a stepparent?*

Minor children are obliged to obey their parents or any persons standing in *loco parentis* such as teachers or stepparents, and discipline and obedience may be maintained by the use of 'ordinary force' including but not limited to spanking, switching or paddling. 21 O.S. §844 (1971).

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The father of a child is entitled to that child's custody, services and earnings. If the father is dead, or has abandoned the child then the mother is entitled to the same. 10 O.S. §5 (1971). However, a stepparent has no such right unless the stepparent receives the stepchildren into his family and supports them as would a natural parent. 10 O.S. §15 (1971)

No parent has control over the property of the child. 10 O.S. §8 (1971).

QUESTION 17. *Must the birth of a child be registered with some agency within the government? If so, how soon after the birth, and where?*

A Certificate of Birth for each live birth must be filed with the local registrar of vital statistics of the district in which the birth occurs within 7 days after such birth. 63 O.S. §1311 (1971).

QUESTION 18. *May the spouse of a person accused of a crime testify in court against the accused?*

Neither husband nor wife shall in any case be a witness against the other except in a criminal prosecution for a crime committed one against the other, or for a crime committed against the minor children of either. However, either husband or wife may testify on behalf of the other, and then be subject to cross-examination. 22 O.S. §702 (1971).

QUESTION 19. *If a person owns a home, automobile, and other property prior to a marriage, does equal ownership right immediately transfer to the spouse at the completion of the wedding ceremony?*

No. See answer to QUESTION 8 for authority.

QUESTION 20. *What is 'emancipation?'*

A child is said to be 'emancipated' when the parents' authority over that child ceases. This may happen upon the marriage of the child, or the child attaining majority. 10 O.S. §10 (1971).

A child attains majority at the age of 18, 10 O.S. §1101 (1971), and until reaching that age, the child is at all times considered an infant in the eyes of the law. However, the district courts have the authority to confer rights of majority upon children under the age of 18 for the limited purpose of entering into contracts, and transacting business in general. 10 O.S. §91 (1971).

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QUESTION 21. *How does emancipation affect a child's position?*

Upon emancipation, the child is no longer entitled to demand maintenance and support from the parent, nor is the parent entitled to the services and earnings of the child. All legal disabilities such as the right to sue in his own name instead of through a guardian or next friend, the ability to enter into a contract, and the right to marry without parental consent are removed from the child. A divorced parent's obligation to pay child support terminates when the child is emancipated, and thereafter the newly emancipated minor is treated as an adult by the law.

QUESTION 22. *What is 'adoption'? How are adoptions arranged? How many children may a family adopt?*

Adoption is a proceeding governed strictly by statute which creates a legal relationship of parent and child between persons who were not so related by nature or law. Unmarried persons at least 21 years of age, married but legally separated persons of at least 21 years of age are eligible to adopt. A husband and wife jointly, or either the husband or wife (if the other spouse is a parent of the child) is eligible to adopt regardless of age. 10 O.S. § 60.3 (1971).

An adult person may be adopted by any other adult person so long as he consents. 10 O.S. §60.21 (1971). Once adopted, a child is treated in all respects just as if he were the natural child of the adoptive parents. 10 O.S. §60.16 (1971). This includes the issuance of a new birth certificate showing that the adoptive child was born to the adoptive parents rather than to the natural parents. Whatever rights the natural parents may have had in the child are extinguished. Likewise the adoptive child has no longer any right to inherit from the natural parent in the event the natural parent dies intestate.

The legal process of an adoption is short and simple if one of the natural parents is deceased. In that case, the remaining natural parent may consent to the adoption generally by the stepfather or stepmother and assuming the other requirements are met, the approval by the district court is normally immediately forthcoming.

Adoptions of children both of whose natural parents are still alive are more difficult. If both parents consent, there is usually no problem. But if one parent does not consent, there must be a special proceeding known as termination of parental rights for which there are a number of grounds but most commonly used is the fact that the father has failed to contribute to the support of the child, although able to do so, for the immediate twelve (12) months preceding. On proper notice and with

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appropriate evidence supporting this fact, the Court may then terminate the parental rights of the non-supporting parent and authorize an adoption approved without the consent of the non-supporting parent. This procedure is too involved to cover in detail and this is intended only as a general statement of law, detailed answers on which vary from fact situation to fact situation and on which the advice of a lawyer should be obtained in each instance.

There is no limit on how many children parents may adopt, as long as the adoptive parents are able to fulfill their duties of support and maintenance for all of the adoptive children.

QUESTION 23. *What is annulment? What are some grounds for annulment? How can a marriage be annulled? What is the difference between an annulment and divorce?*

Annulment of a marriage is a judicial declaration that the marriage was void from its very beginning, and of no legal force and effect. It differs from divorce in that divorce is the dissolution of a valid marriage. A marriage may be annulled where either of the parties lacked the capacity to enter into a marriage contract by reason of insanity, infancy, or if one of the parties to the marriage was already married, and not yet divorced, in which case the second marriage would be bigamous, and void.

However, children of such a marriage conceived before the same is annulled are deemed legitimate. 12 O.S. §283 (1971).

An annulment of a marriage may be obtained in the same manner as a divorce.

**JUVENILE AND
FAMILY COURTS
BY
LOYD L. BENSON**

About the Author:

Lloyd L. Benson holds two degrees from the University of Oklahoma. He earned the B.A. in 1962 and the J.D. (Doctorate of Law) in 1965.

Mr. Benson is a partner in the firm of McBee and Benson, Inc., attorneys in Frederick, Oklahoma. He is a member of the American Bar Association, Oklahoma Bar Association, Secretary-Treasurer of Real Property Section of the Oklahoma Bar Association, Chairman (1977) of Professional Cooperation Real Estate Brokers Committee of the Oklahoma Bar Association, and the Law and Citizenship Education Committee of the Oklahoma Bar Association.

Mr. Benson served as a captain in the U.S. Army in 1965—67.

JUVENILE AND FAMILY COURTS

QUESTION 1. *When was the juvenile court first established?*

The juvenile court movement began in this country in 1899 with the Illinois Juvenile court statute and the system spread into every state of the union.

QUESTION 2. *What is the purpose of the juvenile court?*

This movement was spurred by the idea that a child is basically good, and that it is in the best interests of the state to rehabilitate a child and save him from a downward career. The child was to be treated and reformed, not punished, and therefore the state felt that rules of criminal procedure were inapplicable to the wayward child and could be suspended. It was felt that the state has an interest in the child as a *parens patriae* and had the right to deny the child procedural rights available to adults in exchange for a program of reform rather than punishment.

QUESTION 3. *What are some weaknesses resulting from the informal procedures of the juvenile court?*

The application of such high motives has opened the door to some questionable results. In the informal, secretive hearings of juvenile actions, a child can be arbitrarily stamped a 'delinquent,' (which is only a slightly lesser stigma than being stamped a 'criminal'), denied his liberty, and incarcerated in a State reformatory for a period longer than would have resulted from criminal prosecution on the same acts. The Supreme Court of the United States, fearing that such informal procedures often result in such arbitrary and capricious action with grave consequences, has set down some guidelines to be followed in juvenile actions.

QUESTION 4. *What guidelines need to be followed as a result of the Gault case?*

In Application of Gault, the Court stated that neither the Fourteenth Amendment nor the Bill of Rights is for adults alone. The Federal Constitution requires that due process be accorded a child in juvenile proceedings in which a determination is to be made as to whether a juvenile is 'delinquent' as a result of alleged misconduct on his part with the consequence that he may be committed to a state institution. The Court held that in such cases the juvenile has a right to

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notice of the charges against him, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.

QUESTION 5. *Did Oklahoma attempt to correct the deficiencies of the old juvenile code?*

The statutory law providing for a system of juvenile courts in Oklahoma lacked many of the procedural safeguards demanded by the Federal Constitution as set forth in the Gault opinion. On January 13, 1969, a new juvenile code went into effect in Oklahoma. This new code attempts to correct many of the deficiencies of the old system while at the same time preserving that which was good in the basic idea of having a separate juvenile procedure for 'wayward' children without subjecting them to the regular criminal prosecution. The purpose of the new juvenile code remains, as in the old, to provide aid and encouragement to the misdirected child rather than to have him treated as a criminal.

The New Judicial Article abolishes the children's court and the juvenile court, and the Legislature repealed, effective January 13, 1969, the statutes creating these courts and the substantive law provisions relating to the delinquent, dependent and neglected children that are found in titles 10 and 20 of the Oklahoma Statutes.

QUESTION 6. *Did the Oklahoma legislature create a juvenile division in our court system?*

No. The statute refers to the 'judge of the Juvenile Division.' Also, reference is made to the juvenile docket of the court. However, the Legislature did not specifically create a juvenile division or a juvenile docket, but it requires the clerk to keep a juvenile and family relations docket.

Creating a juvenile and family relations docket was desirable because it has long been recognized that one judge should handle all actions for divorce, custody of minors, adoptions and all proceedings involving delinquent or neglected children.

A separate family court is not possible under our new judicial system, but the district court has jurisdiction over all types of action that involves persons and domestic relations. Therefore, the benefits of a family court can be achieved by assigning all such cases to one docket which is heard by one judge who is an expert on the subject. Under this system conflicts between judges will not be possible.

The new juvenile statute creates a juvenile bureau under the supervision of the judge of the juvenile division. This judge is subject to the

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general administrative authority of the presiding judge of the judicial administrative district.

QUESTION 7. *What is the purpose of notice to hearing?*

The purpose of notice is to give adequate warning so the child can have a reasonable opportunity to prepare for the hearing. The procedure in question in the *Gault* opinion required a petition stating allegations of delinquency in general terms. There was no requirement of service. Gault had been picked up by officers and a hearing was held. His mother appeared at the hearing because of information she gained through a neighbor. The Court held that appearance alone, without prior notice of the proceeding, was constitutionally inadequate.

In the new Oklahoma Juvenile Code, a petition must be filed with the court which sets forth with particularity the facts which bring the child within the purview of the act. After this petition is filed, a summons is to be issued to the parent, guardian, or person who has control of the child which recites briefly the contents of the petition and sets forth with particularity the facts alleged to bring the child within the purview of the act. This notice must be given at least 48 hours before the hearing is held. (Special provisions are made for notice to parents where they are out of the state or when notice must be made through publication.)

As stated in the *Gault* opinion, the Fourteenth Amendment requires that the child and his parents must be notified of the child's right to be represented by counsel retained by them in proceedings that may result in incarceration. In addition, they must be told that if they cannot afford counsel, such will be appointed by the court to represent the child. Mrs. Gault admitted that she knew she could have appeared with counsel, but the Court held that this was not sufficient. The Gaults should have been advised expressly of right to counsel so that they could consider specifically whether to waive this right. The child and his parents should be aware of the seriousness of the charge and the potential incarceration when making the decision. The reasons given for this requirement are the juvenile's needs, among these: coping with problems of law, a skilled inquiry into the facts, insisting upon regularity of proceedings, and ascertaining whether there is a defense and submitting it. The *Gault* Decision requires that the child and his parents be advised of this right to counsel at each hearing that may result in incarceration.

The new Code provides that the summons served shall set forth the right of the child, parents, and other interested parties to have an attorney present at the hearing on the petition. Also there is a provision to the effect that no child shall be questioned by any law enforcement

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officer, investigative agency, or employee of the court or the Department of Public Welfare until the child and his parents, or guardian, or other legal custodian shall be fully advised of their constitutional and legal rights, including the right to a jury trial and the right to be represented by counsel at every stage of the proceedings, and the right to have counsel appointed by the court if the parties are without sufficient funds. The court may appoint counsel even without request if it deems representation by counsel necessary to protect the interest of the child or other parties.

The new Code requires two hearings: one, an adjudicatory hearing to determine the facts of delinquency, and another for the child's disposition.

QUESTION 8. *What is an adjudicatory hearing?*

The adjudicatory hearing is to be conducted in an informal manner, according to the rules of evidence. It further provides that a decision determining a child to come within the purview of the act must be based on sworn testimony and the child must have the opportunity for cross-examination.

QUESTION 9. *Can a juvenile be questioned about any alleged offense?*

The new Oklahoma Juvenile Code makes no mention of the use of confessions by a juvenile. However, there is a provision to the effect that no child may be questioned about any alleged offense unless his parents, guardian, attorney or his legal custodian is present at the interrogation, and not until the child and his parents have been advised of their constitutional and legal rights, including the right to a jury trial and the right to be represented by counsel, and the right to have counsel appointed if they are without funds. This provision places some safeguards around any taking of a confession.

QUESTION 10. *Is the Juvenile Court required to keep stenographic notes or other transcripts?*

The new Code provides that stenographic notes or other transcript of the hearings shall be kept as in other cases. The court is also to keep a record of all cases brought before it. Any notes, transcripts or records of the cases are to be open to public inspection only upon court order.

The proposed Code does not require that the court set out the basis of its findings. It only requires that the court dismiss the petition if it should find that it is not supported by the evidence but if the court

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should find that it is supported by the evidence, the court is to sustain the petition and make an order of adjudication which sets forth whether the child is delinquent, or in need of supervision, or neglected or dependent.

In order that we have a full perspective of the juvenile justice system in Oklahoma, we will examine not only the law but some of the guidelines and procedures of the Court Related and Community Services Division (CRCS) of the Welfare Department approved by the Oklahoma Supreme Court and the Department.

QUESTION 11. *What does intake service mean?*

The term intake service means the receipt, evaluation, and investigation or screening of every complaint concerning a referred juvenile who is alleged to be delinquent, in need of supervision, or dependent and neglected. The definition of intake service also requires a preliminary determination concerning the detention of the minor in an appropriate facility or the release of that juvenile to the parents pending adjudication. If the allegations are substantiated, a decision must be made as to whether an informal adjustment is practicable or whether the case needs to be referred to the district attorney. If so, the intake worker is to assist in the prosecution of that case if a petition is filed.

QUESTION 12. *What is the function of intake in Oklahoma?*

The guidelines for intake in Oklahoma require the CRCS Division of the Department, performing the function of intake, to consult with the district attorney concerning decisions involving legal merit and to assist him with statistical, legal, and social data necessary in the event a petition is filed. It is understood that the final word with regard to the filing of a juvenile petition rests with the district attorney.

QUESTION 13. *What guidelines are required for detention?*

The intake worker must consider the necessity of detention in many cases. Considerations suggested by Detention Guidelines include the violence surrounding the crime, the juvenile's history of serious offenses, and his failure to appear at previously scheduled hearings. If any one of the factors appear, the counselor should refer the matter to the district attorney, recommending detention in accordance with Oklahoma Statutes, pending a hearing. The juvenile should be allowed a detention hearing, and a bond may be set by the court.

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QUESTION 14. *What is the function of the district attorney in such cases?*

The district attorney will prepare all pleadings, including petition, subpoena, notice and summons, and all other necessary legal documents from the date provided by the intake counselor, who may also verify petitions. The juvenile petition shall be verified setting forth the facts which bring the child within the purview of the juvenile court act. Necessary parts of the petition to assure compliance with due process rights must include the name and age, residence of the minor, the minor's parents or guardian, the relief requested and the specific law under which the juvenile is charged and facts sufficient to put the parties on notice of the alleged delinquent conduct as well as an endorsement of witnesses to be called by the petitioner. After a petition is filed, summons shall issue, stating the facts, the relief requested and the right of all parties to have an attorney present at the hearing on the petition. Service of summons, if within the county, shall be made personally by the delivery of a copy to the person summoned.

QUESTION 15. *What is the practice of juvenile hearings in Oklahoma?*

Generally, a public trial is considered inappropriate in juvenile cases because of the desire to protect the minor from publicity. In Oklahoma, therefore, the hearings shall be private unless specifically ordered by the judge to be in public; however, persons having a direct interest in the case shall be admitted.

QUESTION 16. *What is a disposition hearing?*

The second stage of the juvenile hearing, the disposition, is the most important aspect of a juvenile court case, for the juvenile court judge must determine the proper disposition considering the best interest of the child and the public. All evidence helpful in determining the best interest of the child and the public may be used in the dispositional phase of the proceeding.

QUESTION 17. *Can records of juvenile proceedings be destroyed?*

The records of the proceeding where a child was found delinquent or in need of supervision can be ordered by the court destroyed five years after male or female reaches majority. This may be done, with or without a formal hearing, if the child has been of good behavior since majority. The court may find the child to be reformed, order the

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sheriff, chief of police, and court clerk to destroy or obliterate the entire file and record of the case including docket sheets, index entries, court records, etc. The court, moreover, may order it done instant or continue the matter for one additional year before denying or granting the order.

QUESTION 18. *What is certification?*

Certification is the process whereby jurisdiction of the juvenile court of a child under the age of eighteen is relinquished for the purpose of his prosecution for a crime, which if committed by an adult would be a felony.

In Oklahoma the power to certify depends only upon whether a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult.

QUESTION 19. *What is a certification hearing?*

The certification hearing is properly a bifurcated proceeding, with the question of prosecutive merit first being resolved. If prosecutive merit is resolved and is adverse to the minor, the court will make arrangements for a current psychological examination to ascertain the sophistication and maturity of the juvenile.

QUESTION 20. *What is a prosecutive merit hearing?*

The prosecutive merit hearing will be conducted in much the same manner as would a normal preliminary hearing in an adult felon trial. The law in Oklahoma regarding certification requires that prosecutive merit must be found to exist and that no presumption exists that a child who has committed a very serious crime is not receptive to rehabilitative treatment.

QUESTION 21. *Can an order, decree, adjudication of delinquency or a proceeding of certification be appealed?*

Any party that is aggrieved by any order or decree may appeal to the Supreme Court in the same manner as other appeals are taken. However, if the appeal is taken from an adjudication of delinquency or in a proceeding certifying a juvenile to stand trial as an adult, then the appeal shall be taken to the Court of Criminal Appeals in the same manner as other appeals are taken to that court.

GLOSSARY OF TERMS

ADJUDICATORY: An Adjudicatory Hearing under the Oklahoma Juvenile Court is the hearing where the accusations against the juvenile are presented by evidence and testimony in an effort to determine the true facts surrounding the accusations and allegations.

APPLICATION OF GAULT: A 1967 United States Supreme Court case which reversed an Arizona Supreme Court opinion which dismissed a writ of habeas corpus filed by parents of Gerald Gault to secure his release from the state industrial school. The facts of the case are that Gerald was on parole from the juvenile court. He was accused by a neighbor of making lewd phone calls, picked up by the sheriff, and held without notice to his parents. His parents appeared at a hearing held the next morning and at another held several days later. These hearings were informal, no complaining witnesses were present, and Gerald was not represented by counsel. The Judge recalled that there was some admission of making the calls, and at the conclusion of these hearings, Gerald was sentenced to the state reformatory until he reach 21 or be sooner discharged. Gerald was at the time 15 years old. The penal code calls for a punishment of from \$5. to \$50. fine and not more than two months in jail for the use of obscene language which is a misdemeanor. By statute, the juvenile court has exclusive jurisdiction over all juveniles within the age limits set out. Any action by other courts is void and without effect. However, a juvenile court may, if it feels the child has the mental maturity to fully appreciate the alleged wrong, certify the child to a court with criminal jurisdiction. In *Kent v. United States*, the Court considered the requirements of a valid waiver to notice of the charges against him, to counsel, to confrontation and cross-examination of witnesses, and to the privilege against self-incrimination.

The statutory law providing for a system of juvenile courts in Oklahoma lacked many of the procedural safeguards demanded by the Federal Constitution as set forth in the Gault opinion. On January 13, 1969, a new juvenile code went into effect in Oklahoma. This new code attempts to correct many of the deficiencies of the old system while at the same time preserving that which was good in the basic idea of having a separate juvenile procedure for 'wayward' children without subjecting them to the regular criminal prosecution. The purpose of the new juvenile code remains, as in the old, to provide aid and encouragement to the misdirected child rather than to have him treated as a criminal.

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DELINQUENT: A juvenile who has been guilty of a crime, offense or has failed to comply with the rules and regulations.

INSTANTER: Immediately, instantly, without delay, usually understood to mean within 24 hours concerning pleading to an offense.

JUVENILE: A male or female under the age of majority which is 18 in the State of Oklahoma.

NEW JUDICIAL ARTICLE: The New Judicial Article is contained in Title 10, Oklahoma Statutes, Sections 1401 — 1506.

PARENS PATRIAE: The interest that the federal government or state government has as a sovereign over persons of minority age.

PURVIEW: Within the scope of.

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For further information on juveniles and the law readers are referred to articles in the appendix written by Judge Alan J. Couch and Judge Glenn Dale Carter.

LANDLORD AND TENANT LAW

By

Donald M. Bingham

About The Author:

Donald M. Bingham is a practicing attorney in Tulsa, Oklahoma where he was born and raised. He graduated with honors from Princeton University with a Bachelor of Arts in Philosophy and Religion. While attending the University of Tulsa College of Law, he was employed first as a Tulsa Police Officer and then as a Probation Counselor for the Tulsa County Juvenile Bureau. While in law school, he won the American Jurisprudence Award for Evidence and Sales and Secured Transactions, and received his Juris Doctorate in 1976.

In 1970-71, Bingham was an instructor at Tulsa Junior College in Psychology and American Civilization. From 1975 to 1978, he served as legal intern and Assistant District Attorney for the Tulsa County District Attorney's office. In August, 1978, Bingham resigned as Criminal Prosecutor to join the firm of Chapel, Wilkinson, Riggs, Abney and Keefer in the general practice of law. He is a member of the Tulsa County Bar Association, Oklahoma Bar Association, American Bar Association, and Oklahoma Trial Lawyers Association.

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The 1978 Legislature has passed into law an act which, for the first time in Oklahoma, specifies the rights and obligations of both landlords and tenants. This legislation is known as the 'Oklahoma Residential Landlord and Tenant Act'. This Act, which became effective on October 1, 1978, represents the controlling law in Oklahoma when questions or disputes arise in rental situations, and it should be carefully consulted with the advice of an attorney before any legal action is initiated. The following is a brief summary of the major points found in this legislation, which is of course subject to annual change through amendment by the Legislature.

I. General Issues

QUESTION 1. *What situations and transactions are covered by the Oklahoma Residential Landlord and Tenant Act?*

This law governs all residential living arrangements except occupancy in a public or private institution, transient occupancy in a hotel, motel, or other similar lodging, residents in a condominium or home owners cooperative, occupancy under a contract of sale or contract for deed, and use or occupancy of land primarily for agricultural purposes.

QUESTION 2. *Are the landlord and tenant free to make a rental agreement which is contrary to this Act?*

No party may enter into a residential rental agreement whose terms contradict or evade the provisions of this law. Terms which violate the Oklahoma Residential Landlord and Tenant Act are unenforceable. In addition, the Act imposes upon each party a duty of acting in good faith when the exercise of a certain right or remedy is sought. Both landlord and tenant must make every reasonable effort in good faith to comply with each requirement of this Act; otherwise, the courts will not enforce rights and obligations, even though the law may provide for their enforcement on its face. A court will examine the conduct of the party who brings suit, to determine if that party's conduct is reasonable and satisfies all required legal conditions.

II. Landlord Issues

QUESTION 3. *What is a 'Landlord'?*

Under the Acts, 'landlord' means the owner of the dwelling unit or the one who leases it to the occupant. An apartment manager is not considered a 'landlord' unless he fails to provide the occupant with written notice of the true landlord's identity and whereabouts, and if he fails to do so, the manager is legally considered to be the landlord for purposes of the Act.

QUESTION 4. *As a landlord, should I have my tenant sign a written lease?*

It is always advisable to reduce any residential rental agreement to writing, but oral agreements of this kind are enforceable so long as the agreed period of occupancy does not exceed one year. However, oral rental agreements are enforceable only on a month-to-month basis; that is, neither landlord nor tenant is obligated for more than thirty days occupancy under an oral arrangement, unless of course the parties decide to extend it monthly. A 'landlord' who simply takes a roomer or boarder into his own home can enforce an oral rent agreement only on a week-to-week basis. This special case means that the boarder is obligated only to stay and pay rent for one week, unless both he and the landlord agree to extend this arrangement weekly.

Of course, the provisions described above do not apply in the case of a written rental agreement signed by both parties. The written rental agreement is the final document which governs all aspects of the landlord-tenant relationship and specifically fixes the agreed period of occupancy and liability for rent. Remember, however, that although the written rental agreement is the final authority in landlord-tenant disputes, any of its provisions which violate the Act are nevertheless unenforceable.

For instance, the Act says that a rental agreement may not require the signing tenant to waive or forego any rights or remedies which he has under the Act. In addition, the act forbids a landlord to require that his tenant sign a rental agreement which states that the tenant will pay the landlord's attorney fees if a lawsuit becomes necessary, or which states that the tenant agrees not to sue the landlord for any damages or injuries caused by the acts or omissions of the landlord. In effect, the Oklahoma Residential Landlord and Tenant Act recognizes that most prospective tenants have a limited ability to negotiate fair and suitable terms in the rental agreement when generally it has already been drafted

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by the landlord and is merely presented in a form to the prospective tenant. The Legislature passed the Act to establish and promote its policy that tenants should not be forced to waive their substantial rights in order to secure adequate housing.

QUESTION 5. *As a landlord, what are my rights and responsibilities in the event that my tenant stays in residence after the expiration of his lease?*

If the tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement, the landlord may immediately bring suit for possession of the premises and damages. If the tenants holdover is willful and not in good faith, the landlord may also recover an amount not more than twice the average monthly rental, or not more than twice the proportion of the monthly rental which covers the holdover period if less than one month. This lawsuit may be brought by the landlord in Small Claims Court, and the landlord may represent himself in the suit or he may be represented by counsel.

If the tenant abandons or surrenders possession of the dwelling unit and leaves household goods, furnishings, or any other personal property in the dwelling unit, the landlord may take possession of the property and, if it has no apparent value, he may dispose of the property without liability to any party. However, if the property left by the tenant appears to have an ascertainable value, the landlord may take possession of the property, but he must store it and maintain it for thirty days in order to afford the tenant a fair opportunity to reclaim the property. If the tenant does appear and claims his property during that period, the tenant is entitled to return of the property but he must first pay the landlord the full cost of storing and maintaining the property. In the event that the property remains unclaimed for thirty days, the landlord may file suit and request that the Court allow him to sell the property. After the landlord gives public notice of his request, and if the tenant fails to respond, the Court may allow the landlord to sell or otherwise dispose of the property. The landlord may then use the proceeds from any such sale of the property to cover his own expenses in storing the property and any remaining debt of the tenant for unpaid rent.

QUESTION 6. *What are my rights and duties as landlord in the case of delinquent rent?*

If rent is unpaid when due, the landlord must give written notice of his demand for payment and then allow five additional days for payment before he may take further action to terminate the lease or evict

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the tenant. If rent remains unpaid after the five day period, the landlord may of course bring suit in court to evict the tenant and recover rent due and damages, if any. However, the landlord has an immediate remedy which he may exercise while his suit is pending; under the Act, a landlord has a lien upon the personal property of the tenant in the dwelling unit, to the extent of the amount owed. His lien gives him the right to possession of the tenant's personal property to that extent, until the rent is fully paid. The landlord may withhold such personal property from the tenant until the tenant satisfies the debt or until a court allows the landlord to sell the property to satisfy the debt. The Act exempts certain personal property from such seizure and withholding by the landlord, and he may not take possession of the tenant's tools, books and pictures, clothing, kitchen appliances and cooking ware, items related to personal health and hygiene, and any property used in the care of babies. If a landlord takes possession of personal property authorized by the Act, he is entitled to do so as a means of enforcing his lien but he is also liable to maintain the property safely and properly while he withholds it from the tenant.

QUESTION 7. *As the manager of an apartment complex, what are my duties and rights in relation to the owner of the complex and the tenants?*

You must insure that in the written rental agreement there is notification of the following: (a) the person or persons authorized to manage the premises; (b) the owner or owners of the premises; (c) the name and address of a person authorized to act for and on behalf of the owner for the purpose of receipt of Court Summons and tenant notices. This information must be kept current with appropriate written revisions given to tenants. Any apartment manager who fails to insure that his tenants receive such information about the owners actually becomes a landlord under the Act. If the manager complies with these requirements of notification, then he is not personally liable to perform the duties of the 'Landlord' as specified in the rental agreement and in the Act, but if he fails to do so, he is accountable for the performance of these duties in addition to the owner remaining liable for their performance.

QUESTION 8. *As a landlord, what requirements does the law place upon my handling of the damage or security deposit?*

The rental agreement may require of a tenant that he make a damage

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or security deposit, to be kept by the landlord and returned at the expiration of the lease. However, the landlord must place all deposits in an escrow account for the tenants in a federally insured financial institution. Misappropriation of the security deposit is unlawful and punishable by a term in the county jail not to exceed six months and by a fine in an amount not to exceed twice the amount misappropriated from the escrow account. Upon termination of the tenancy, the tenant is required to give written demand to the landlord for return of his security or damage deposit. Upon such written demand by the tenant, the landlord is required to return the security deposit without interest to the tenant within thirty days after the termination of tenancy and receipt of the written demand. Even where a tenant makes such written demand for return of his security deposit, the landlord may apply some or all of the deposit to cover the cost of repair to the premises or toward unpaid rent. The landlord is required, however, to itemize any such application of the deposit in a written statement delivered personally to the tenant if he can reasonably be found. A tenant is not permitted to apply or deduct any portion of the security deposit from the last month's rent, unless the written rental agreement so provides. If the amount of the damage or security deposit is not sufficient to cover damages or debts incurred by the landlord, he may still sue the tenant for the remainder due.

QUESTION 9. *Does the law impose upon me, a landlord, other general duties concerning management of the premises?*

At all times during the tenancy, a landlord must keep all common areas of his building, grounds, and facilities in a clean, safe, and sanitary condition. In addition the landlord is responsible for making all repairs (unless the rental agreement specifies that the tenant shall do certain repairs or alterations) and for doing whatever is necessary to put and keep the tenant's dwelling unit in a fit and habitable condition. The Act does not clarify the phrases 'whatever is necessary' or 'fit and habitable condition.' If the landlord and tenant are unable to agree on the meaning of these phrases as they apply to particular premises, a Court will hear all the facts and decide what is 'necessary' and 'fit and habitable' based upon a standard of 'reasonableness.' Further, the landlord must maintain in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, including elevators, on the premises. The landlord is legally responsible for providing and maintaining appropriate receptacles and conveniences for the removal of garbage,

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rubbish, and other waste from the dwelling units, and for arranging for the frequent removal of such waste. Except where dwelling units are serviced by direct and independently-metered utility connections, the landlord must supply running water and reasonable amounts of hot water at all times and reasonable heat.

QUESTION 10. *As a landlord what are my rights and responsibilities when a tenant fails to make required repairs, damages the premises, or abandons the dwelling unit wrongfully?*

In addition to an obligation to pay rent when due, a tenant has certain other obligations with respect to the maintenance of his dwelling unit (see below). If a tenant fails to maintain his premises as required by the Act or by his rental agreement, the landlord may either terminate the rental agreement fourteen days after he requests rectification of the condition, or make the necessary repairs himself fourteen days after such request and bill the tenant for the cost of the repair. In either case no action may be taken by the landlord until after the expiration of the fourteen-day notice period, during which the tenant may comply with the landlord's request and avoid termination or billing; however, any non-compliance by the tenant with the rental agreement or with any requirements of the Act which causes or threatens to cause imminent and irreparable harm to the premises or to any person and which is not remedied by the tenant as promptly as conditions require after he has notice of it will serve as grounds for the landlord to terminate the rental agreement immediately upon notice to the tenant.

If the tenant wrongfully abandons the dwelling unit during the term of the tenancy, the landlord must make reasonable efforts to make the dwelling unit available for rental. If, after making reasonable efforts to make the dwelling unit available for rental after it is abandoned, the landlord fails to re-rent the premises for a fair rental during the term, the tenant shall be liable for the entire rent or the difference in rental, whichever may be appropriate, for the remainder of the term. If the landlord fails to use reasonable efforts to make the dwelling unit available for rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment.

III. Tenant Issues

QUESTION 11. *What is a 'tenant' under Oklahoma law?*

'Tenant' means any person entitled under a rental agreement to occupy a dwelling unit. 'Dwelling Unit' means a structure, or that part of a structure, which is used as a home, residence, or sleeping place by one or more persons. Any tenant who occupies a dwelling unit under a rental agreement is obligated to perform his duties in good faith, just as good faith is also required of his landlord. The Act defines 'good faith' as meaning honesty in fact.

QUESTION 12. *As a tenant, who is ultimately responsible as landlord for the proper maintenance of my dwelling unit and the surrounding premises?*

Under the Act, the actual owner of the building or dwelling unit is ultimately liable for performance of landlord duties under the rental agreement. He cannot avoid ultimate responsibility for such a performance even though he may delegate certain duties and authority to the manager and other agents. Of course, the tenant is responsible to pay rent to the owner of the building and to no one else, unless the owner gives the tenant written notice of a change in ownership. A tenant is not permitted to make rental payments to any person other than the actual owner or his designated agent without the consent of his landlord or a court order directing the tenant to pay someone other than the actual owner of the dwelling unit.

QUESTION 13. *What are my tenant's rights if the landlord refuses to deliver possession of the dwelling unit to me, or after a certain period wrongfully removes or excludes me from my unit?*

If after the signing of a rental agreement, the landlord fails or refuses to deliver possession of the dwelling unit to the tenant, no rent may be charged and the tenant is entitled to terminate the rental agreement by giving a written notice of such termination to the landlord, in which case the landlord must return all prepaid rent and deposit. In the alternative, the tenant who does not wish to terminate the rental agreement may bring suit requesting that the court order the landlord to deliver possession to the tenant and award any actual damages sustained by the tenant during his period of wrongful exclusion.

If after a period of occupancy by the tenant, the landlord wrongfully removes or excludes the tenant from the premises, the tenant may bring

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suit to recover an amount not more than twice the average monthly rental, or twice his actual damages, whichever is greater. Also, the tenant is given the legal option of merely terminating his rental agreement after giving notice of such intention to the landlord, in lieu of a lawsuit. If the rental agreement is terminated, the landlord must return all deposits and all prepaid rent.

QUESTION 14. *What right does my landlord have to enter my dwelling unit and what action may I take if his entry is wrongful?*

The landlord has a general right to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, or to exhibit the dwelling unit to prospective purchasers or workmen. In such cases, a tenant shall not unreasonably withhold consent to the landlord; nevertheless, the landlord may enter under such circumstances only at reasonable times and only after giving the tenant at least one day's notice of his intent to enter the dwelling unit. Under the Act, the landlord, his agents and employees may enter the dwelling unit without consent of the tenant in case of an emergency. Other than in the situations described above, the landlord has no right of access during a tenancy unless he has a court order authorizing him to do so. If the tenant refuses to allow lawful access in the situations described above, the landlord may bring suit to compel access or he may terminate the rental agreement upon notice to the tenant.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may bring suit to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case, the tenant may recover actual damages by bringing suit and proving the harassment and disruption of his privacy.

QUESTION 15. *As a tenant, what remedies do I have if my landlord fails to make necessary and required repairs?*

If the landlord fails or refuses to comply with repair provisions of the rental agreement or with required conditions under the Act, the tenant may deliver to the landlord a written notice specifying the lack of compliance and stating that the rental agreement will terminate upon a date not less than thirty days after receipt of the notice if the conditions are

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not remedied within fourteen days. Upon such notice to the landlord, the rental agreement shall terminate as provided unless the landlord adequately remedies the conditions within the time specified.

The tenant, however, also has another option when the landlord breaches his duty to repair the premises or neglects to maintain the dwelling unit in a condition required by the Act. If the landlord's non-compliance materially affects health, and the condition can be corrected by repairs costing less than one hundred dollars, the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen days. If the landlord fails to comply within the fourteen days, or as promptly as conditions require in the case of an emergency, the tenant may then have the work done by himself or other persons in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair value of the work, not exceeding one hundred dollars. If the tenant exercises this option, the rental agreement is not terminated.

In the event that the landlord fails or neglects to provide essential services such as heat, running water, hot water, electricity, or gas, the tenant may give written notice to the landlord specifying the failure to provide such service and may immediately terminate the rental agreement. In such event, also, the tenant may instead obtain reasonable amounts of heat, hot water, electricity, gas, etcetera during the period of the landlord's non-compliance and then deduct the actual cost of such services from the rent payment. Of course, the tenant is free to choose the alternative of bringing suit to recover damages based upon the reduction in the fair rental value of the dwelling unit. Finally, the tenant has the option to obtain reasonable substitute housing during the period of the landlord's non-compliance, in which case the tenant is excused from paying rent during the period. It is important to note that all rights of the tenant in the above situations do not arise until he has given written notice to the landlord, except in the case where the condition complained of was caused by the deliberate or negligent act of the tenant, his family, or his guests. If the tenant himself causes the lack of essential services, he has none of the rights described above to hold the landlord accountable for the restoration of such services.

QUESTION 16. *As a tenant, what are my rights and duties regarding damage to the dwelling unit?*

Unless the damage is caused by the deliberate or negligent act of the tenant, his family, or his guests, a tenant has two options when his dwelling unit is damaged or destroyed by fire or other casualties: first,

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he may immediately vacate the premises and notify the landlord in writing within one week after the occasion of the damage, stating his intention to terminate the rental agreement, in which case the rental agreement is considered terminated as of the date of vacating; second, if continued occupancy is possible, the tenant may vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the reduction in the fair rental value of the dwelling unit. If the rental agreement is terminated due to fire or casualty damage, the landlord must return all deposits and all prepaid rent.

QUESTION 17. *What are my general duties as tenant toward the conditions in and around my dwelling unit?*

A tenant must at all times during the tenancy keep his dwelling unit as safe, clean, and sanitary as the condition of the premises permits, and regularly dispose of all garbage and other waste into the system or receptacles which are required to be maintained by the landlord. The tenant is required to use in a safe and non-destructive manner all electrical, plumbing, sanitary, heating, air conditioning, and other facilities and appliances in the premises and of course a tenant may not deliberately or negligently destroy, deface, or remove any part of the premises or permit any person to do so. The Act further specifies that a tenant must not engage in conduct or allow any person on the premises to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants.

QUESTION 18. *As a tenant, what rights in general can I expect to receive under the Act?*

An important right given to tenants by the Act is the right of notice before legal action may be taken by the landlord. For example, the landlord must give his tenant at least thirty days notice before the date upon which he seeks to terminate the rental agreement. As another example, if a tenant fails to make a rent payment when due, the landlord may not take legal action to evict the tenant unless he has first given the tenant written notice of his demand for rent and then waited for five days, during which the tenant may pay the rent in full. As described above, the tenant has a right to prohibit the landlord from entering his dwelling unit at unreasonable hours or without the tenant's permission, except in the case of an emergency. The Act protects the tenant's security or damage deposit by requiring the landlord to set it aside in a separate escrow bank account and providing criminal penalties if the

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landlord misappropriates the deposits. Although the landlord is entitled to seize certain personal property belonging to the tenant when rent is unpaid, the Act nonetheless establishes some protection for the tenant by exempting important personal property from the items which may be seized and by requiring the landlord to give written notice to the tenant before the seized property is sold or otherwise disposed of. Under the Act, a tenant is entitled to redeem any property which the landlord seizes to enforce his landlord's lien, simply by making full payment of any rent due, and a tenant who leaves personal property on the premises when he surrenders his dwelling unit is entitled to reclaim all such property simply by paying any expenses which the landlord incurred in its storage.

As stated above, a tenant always maintains his right to bring suit against and recover damages from the landlord in the event that the tenant suffers injury caused by the negligence of the landlord, and these rights exist in favor of the tenant even if the rental agreement provides otherwise. The tenant is further given a right of self-help in cases where the landlord fails or refuses to make repairs which are necessary and required by the rental agreement. In such a case, the tenant has the right to deduct from his rental payment the actual cost or fair value of repairs made when the landlord failed to comply.

A tenant has certain valuable rights under the Act whenever a landlord adopts or changes a rule concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if: (a) its purpose is to promote the convenience, safety, or welfare of all tenants, or preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally; and (b) it is reasonably related to the purpose for which it is adopted; and (c) it applies to all tenants in a fair manner; and (d) its language is sufficiently clear to fairly inform the tenant what must be done to comply with the rule; and (e) it is not adopted for the purpose of evading the obligations of the landlord.

In addition, if the landlord imposes or changes a regulation, or attempts to amend the rental agreement by including such new rule, the tenant is entitled to notice of it at the time such tenant enters into the rental agreement, or when it is adopted. The Act also provides that if a rule or regulation is adopted after the tenant enters into the rental agreement and the rule or regulation works a substantial modification of the tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the tenant unless the tenant consents to it in writing.

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The foregoing discussion has been merely an overview of the Oklahoma Residential Landlord and Tenant Act. There are many other detailed provisions of this Act which have not been discussed. Some residential leasing disputes can be settled by simply reading the appropriate section of the Act. However, other disputes may involve complex interpretations of certain phrases used in the Act, and the assistance of legal counsel will be necessary. The Act further provides that Small Claims Court may be used as a forum to settle disputes between landlord and tenant when an informal resolution cannot be reached.

LAW OF PROPERTY
By
Charles Leslie Pain

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Mr. Pain served as District Governor of the Lions Club in 1954-55. He had military duty in the Pacific Theater during World War II and holds the rank of Colonel, U.S.A.R.-Retired.

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General

QUESTION 1. What is meant by ownership? Property?

Ownership as defined in the Oklahoma statutes is '...the right of one or more persons to possess and use a thing to the exclusion of others...the thing of which there may be ownership is called property.' Some have called 'property rights' the bundle of rights related to ownership of a thing.

QUESTION 2. How is property classified?

Property is classified as either real (immovable) or personal (movable).

Real property consists of land: that which is affixed to land, such as, buildings, fences, and the like; that which is incidental or appurtenant to land, such as, a right of way to use a road over someone else's land and other similar rights. Buildings also include that which is permanently attached to a building, such as built-in stove, sink, and the like, and that which is permanently attached by means of cement, nails, bolts, or screws. Trees, growing crops, and the like, are also considered to be part of the land and, thus, real property.

Personal property is defined by Oklahoma statutes as every kind of property that is not real, which has just been discussed. Personal property is the right to own those things that can be moved. These things are (tangible) called 'chattels.' Automobiles, furniture, boats, and such articles, are subjects of personal property. While a building on a foundation attached to land is considered real property, another building which is not on a foundation, but on a temporary base, or possibly on skids, would be considered as personal property. Some property is called 'intangible' property, such as bank accounts, bonds, and the like, which is something that cannot be seen or moved but which is represented by papers or certificates. Under the Oklahoma definition, however, this would be included in personal property.

Real property is generally transferred by deed. However, a lease for a period of years would be a transfer of property for a limited period of time. Any property may be transferred by death under a will or under the laws relating to inheritance.

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QUESTION 3. *When property is transferred, who signs the deed?*

The Oklahoma Constitution provides that any deed covering land which is used as a home, or homestead, must be signed by both husband and wife, no matter which of them owns it or whether or not both of them own it. Inasmuch as one cannot tell from looking at the deed whether or not the land is a homestead, lawyers generally require that both husband and wife must sign any deed to any land; and if the person making the deed is single, or unmarried, that fact must be stated after the name of that person in the deed. Likewise, not only the husband and wife both sign the deed, but they should be described in the deed as husband and wife, or similar identification.

QUESTION 4. *What is the difference between a deed made to tenants and joint tenants?*

A deed may be made to one or more persons. If a deed is made to more than one person, then each person has an equal share in that land unless the deed states what specific shares each shall have. If the deed is made to more than one person 'as joint tenants and not as tenants in common,' sometimes adding 'with right of survivorship,' then the survivor of those persons will take all of the property upon the death of either, regardless of any will or law of inheritance. The reason is that the survivor is entitled to the land under the deed; therefore, it is not a part of the estate of the deceased owner under such a deed. A sample of a typical deed is on page 83. A sample of a deed to parties as joint tenants with right of survivorship is on page 85. Deeds and all papers which affect land or real property should be recorded in the office of the county clerk of the county where the land is located as soon as possible so that the public will be notified as to the ownership of the land.

QUESTION 5. *How can personal property be transferred?*

Laws with respect to the transfer of personal property are less formal than those for transfer of land or real estate. Personal property may be transferred simply by change in possession, such as, when one purchases an article at a store. Certain articles, such as, automobiles, trucks and other motor vehicles, and boats carry with them papers showing the ownership, which are generally called 'certificates of title.' In transferring such things as an automobile, it is necessary that the owner sign what is called an assignment on the back of his certificate; have that assignment presented to an automobile tag agent or to the Oklahoma Tax Commission to register that change of ownership; and

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get a new certificate of title to the new owner showing who is the owner of the property at any time. Frequently, property will be transferred by a bill of sale. A typical copy of a bill of sale may be found on page 87.

QUESTION 6. *What is a warranty deed?*

Deeds to land or bills of sale to personal property may be with or without warranty. Most deeds are warranty deeds, in which the seller guarantees that he is the owner of the property, and if anyone else claims to be the owner, the seller will help the buyer defend against any such claims or will make good the buyer's loss if the other party proves to be the true owner. With respect to bills of sale, most contain a warranty, or guarantee of ownership, with such other warranties that may apply. If the seller does not wish to guarantee his title, or warrant that the article of personal property will not perform the purpose of which it is sold, he must include such a limit on the warranty in such manner as to call attention to it. Otherwise, the seller may be considered under the law known as the Commercial Code as having made the warranty or guarantee.

QUESTION 7. *What is a quit claim deed?*

A quit claim deed is a deed in which the seller transfers to the buyer all of his interest in the land, but does not guarantee that he is the owner.

QUESTION 8. *What is a typical way of selling real estate? Must a seller use a real estate agent?*

A person who has land for sale will frequently seek the services of a real estate dealer, or realtor, since the realtor is readily available to buyers and more buyers make inquiries of real estate dealers as to what land is for sale. The land is 'listed' with the real estate dealer for sale; and the real estate dealer may have the owner sign a listing contract specifying the price to be received, the commission which the real estate dealer is to receive, whether or not the same property might be listed with other real estate dealers, the time in which the dealer will have to sell the property, and other similar terms. The dealer will then advertise and attempt to find purchasers, and is generally authorized by the owner to show the property, although the owner may require that the dealer give some notice in showing it.

QUESTION 9. *What is a typical real estate transaction through a real estate dealer?*

When the real estate dealer finds a buyer for the land, a real estate

purchase contract will be prepared, signed by the owners and the buyers, and sometimes by the realtor. This contract will generally provide that the owner agrees to sell and the buyer agrees to buy the land in question, the price to be paid for the land, how it is to be paid, and, generally, that a portion of the price, usually ten per cent, is placed in what is called an escrow deposit to be held by a third party, such as a bank, title company, or other, until the sale is closed, together with a deed signed by the owner. The owner will agree to furnish what is called an abstract of title to be examined by the buyer, or usually by the buyer's attorney, to show that the owner is the true owner of the property and that no one else has a claim to it, except as may be specified in the contract. The buyer will have a certain time in which to have the abstract examined and is to furnish an opinion to the owner showing any questions raised about his ownership or title; and the owner has a specified time in which to satisfy those questions, or title requirements. When the buyer is satisfied that the owner is the true owner of the property, having what is called 'marketable title,' meaning ownership that can be transferred to the buyer without question, a time will be set for closing the sale, frequently where the partial payment was placed in escrow.

At the closing, the person conducting the closing will determine what must be paid by the owner, such as revenue stamps (a sort of tax on the sale), the abstract expense, taxes which may be due or which may be agreed to have been divided at the contract of sale, real estate commission, indebtedness against the property, and the like. At the same time, he will compute what must be paid by the purchaser, such as the title examination fee, insurance adjustments, recording fees, and the like. A closing statement showing all such sums to be paid by and credited to each party, owner and buyer, is furnished to each of them; and when all such payments have been made, the balance of the purchase price is paid to the owner and the deed is delivered to the seller, who should have it recorded.

QUESTION 10. *What is an abstract of title?*

An abstract of title is a sort of book made up by a specially qualified person or company known as an abstractor, who places in the book all papers from the county records in the office of the county clerk, where land records are kept, the county treasurer, relating to property taxes, and the court clerk, relating to all court proceedings, concerning that particular piece of land. In counties where a United States district court is located, it will also include references in the United States district court relating to that land. The abstract generally starts with 'patent' by which the sovereign government granted ownership of that land to a

LAW OF PROPERTY

person, whether that government was the United States of America or the State of Oklahoma. Each deed, mortgage, release, lease, and every other paper which has been recorded is shown, as well as tax information, and papers from court matters which affect that land. The mere fact that a person has an abstract to the property does not necessarily mean that he has good ownership of the property; therefore, the abstract must be carefully examined by a person with particular knowledge and ability to understand the meaning of those various papers, usually a lawyer, to determine the ownership of the property. The lawyer who makes such an examination will give a title opinion showing who, in the lawyer's opinion, is or are the owners of the property and anything that affects that ownership.

QUESTION 11. *What is a lien?*

The law gives certain persons protection for payment of money that may be due with respect to property, in the nature of what is called a 'lien.' A lien is a special claim against property to insure payment, generally, for what has been done for that property. For example, one who either furnishes labor or material for the construction or repair of a building or other improvement on land is given a lien against that land; and if the owner of the land fails to pay for the labor or material so furnished, the person furnishing the labor or material may within the time allowed file his statement of lien against the property, which will show as a claim against the ownership of that property and will be included in the abstract of title concerning the property. This means that the owner does not have a good ownership and must have the lien removed either by paying the claim or by proceedings in court to show that the claim is not a good claim. The person furnishing the labor or material may file a suit in the court to require the property to be sold to pay off his claim.

A lien is also given to a seller of land for the unpaid portion of the purchase price. A lien is given to persons who store, repair, improve, or do certain work on articles of personal property. A landlord may have a lien on the crop of his tenant. A person who feeds cattle or other livestock for another person may have a lien against that livestock. A banker may have a lien upon property in possession of the bank for indebtedness due from the owner of that property to the bank. A hotel may have a lien upon the baggage and other items rightfully in the guest's possession for payment of charges. These are examples of liens which are provided for in Oklahoma and do not necessarily include all of them.

QUESTION 12. *What is a mortgage?*

A mortgage is another type of lien which is generally created by agreement of the parties. A mortgage is a written document by which the owner of land gives that land as security for payment of the debt. The mortgage remains as a claim against the property until the debt has been paid, at which time a written release of the mortgage must be made and recorded with other land records. The mortgage is usually recorded in the land records, and any person dealing with the owner must see that the mortgage is released.

The buyer of property may in some instances, when the mortgage does not provide otherwise, buy land that has a mortgage on it and agree to pay the remaining payments due on the debt for which the mortgage is given. This is called 'assuming' the debt secured by the mortgage. In any event, if the debt is not paid, the holder of the mortgage can start a suit in the court to require the property to be sold for payment of the debt secured by the mortgage, whether or not the land has later been sold to another person. An example of a real estate mortgage may be found on page 89.

QUESTION 13. *What is a security agreement?*

Personal property may also be given as security for a debt. The paper by which personal property is given as security is called a 'security agreement.' The creditor or lender will generally require the debtor also to sign a 'financing statement' which may be filed in the office of the county clerk of the proper county, to give the public notice of the claim against that personal property because of the debt. The creditor in the security agreement may also file suit in the court to require the sale of that property to satisfy the debt, but, in addition in most cases may take possession of the personal property and sell it to satisfy the debt.

This is an introduction to the law of property, which covers a wide variety of subjects.

WARRANTY DEED

(Statutory Form - Individuals)

KNOW ALL MEN BY THESE PRESENTS

THAT John Smith and Mary Smith, husband and wife,

_____ parcels of the first part, in consideration of the
sum of Ten and more dollars,

and other valuable considerations, in hand paid, the receipt of which is hereby acknowledged, do

hereby grant, bargain, sell and convey unto Richard Roe and Jane Roe

_____ part ies
of the second part, the following described real property and premises situate in Caddo
County, State of Oklahoma, to wit:

The Southeast Quarter (SE/4) of Section Ten (10), Township Ten (10) North, Range Ten (10) West, T.M., LESS AND EXCEPT an undivided one-half interest in the oil, gas and other minerals in and under or that may be produced from said premises, which is expressly reserved to the above named Grantors together with the right of ingress and egress thereon for the purposes of exploration and development of such minerals,

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title to the same

TO HAVE AND TO HOLD said described premises unto the said part ies of the second part,

their heirs and assigns forever, free, clear and discharged of and from all forms, grants, charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 22nd day of August, 19 77

John Smith

Mary Smith

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Oklahoma County of Caddo
Before me, a Notary Public in and for said County and State on this 22nd day of August, 19 77
personally appeared John Smith and Mary Smith, husband and wife,

known to me to be the abovesaid persons, who acknowledged the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

I then asked my hand and seal the day and year last above written.

My commission expires _____

Notary Public

NOTE: This form supplied by TITLE GUARANTY DEPARTMENT OF AND/OR AN FIRST TITLE & TRUST CO., Oklahoma City, for the convenience of ATTORNEYS. No legal instrument or form should ever be prepared by anyone other than an Attorney.

(Biaturary Form—(individual)

FROM

TO

TRUSTS

ESCMOWS



GUARANTEED TITLES
ABSTRACTS

MICROFILMING

AMERICAN-FIRST TITLE & TRUST CO
Oklahoma City, Oklahoma

Return to

INDIVIDUAL ACKNOWLEDGMENT

STATE OF _____ County of _____ 88

Before me a Notary Public in and for said County and State on this _____ day of _____ 19____
personally appeared _____

To me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth

Given under my hand and seal the day and year last above written

My commission expires _____ Notary Public

JOINT TENANCY
WARRANTY DEED

(Individual Form)

KNOW ALL MEN BY THESE PRESENTS

THAT John Doe, a single man,

_____ party _____ of the first part, in consideration of the
sum of Ten and more _____ dollars
and other valuable considerations, in hand paid, the receipt of which is hereby acknowledged, do es
hereby grant, bargain, sell and convey unto Richard Roe and Jane Roe

as joint tenants and not as tenants in common, with the right of survivorship, the whole estate to vest in the
survivor in event of the death of either, parties of the second part, the following described real property and
premises situate in Oklahoma County, State of Oklahoma, to-wit:

Lot One (1) in Block One (1) in the Original
Townsite of the City of Oklahoma City, Oklahoma,
according to the recorded plat thereof,

together with all the improvements thereon and the appurtenances thereunto belonging, and warrant the title
to the same

TO HAVE AND TO HOLD said described premises unto the said parties of the second part as such joint
tenants, and to the heirs and assigns of the survivor, forever, free, clear and discharged of and from all former
grant's charges, taxes, judgments, mortgages and other liens and incumbrances of whatsoever nature.

Signed and delivered this 22nd day of August, 1977

John Doe

STATE OF OKLAHOMA _____
COUNTY OF Oklahoma _____

INDIVIDUAL ACKNOWLEDGMENT
Oklahoma Form

Before me the undersigned a Notary Public in and for said County and State on this 22nd day of
August, 1977 personally appeared John Doe, a single man,

to me known to be the identical person _____ who executed the within and foregoing instrument and acknowledged to me that
he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My Commission expires _____ Notary Public

NOTE: This form is supplied by TITLE GUARANTY DEPARTMENT of AMERICAN-FIRST TITLE & TRUST CO. Oklahoma City, for
the convenience of ATTORNEYS. No legal instrument or form should ever be prepared by anyone other than an Attorney.

Warranty Deed

Individual Form

FROM

10

TRUSTS

DISCUSSION



GUANANYEED TITLES

BLUE PRINTS

ABSTRACTS

PHOTO COPIES

MICROFILMING

The American-First Title & Trust

Company

Oklahoma City, Oklahoma

References

INDIVIDUAL ACKNOWLEDGMENT
Oklahoma Form

STATE OF OKLAHOMA

COUNTY OF

52

Before me, the undersigned, a Notary Public, in and for said County and State, on this _____ day of _____

19....., personally appeared

to me known to be the identical person _____ who executed the within and foregoing instrument and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires _____ Notary Public

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

THAT Good Earth Moving Company, a corporation,
_____, Party _____ of
consideration of the sum of More than ten Dollars -----
in hand paid by John Smith

Party _____ of the Second Part, the receipt whereof is hereby acknowledged,
have bargained, sold, granted and conveyed and transferred and by these presents
do bargain, sell, grant, convey and deliver unto the said Part y _____ of the Second
Part, his _____ heirs, administrators, and assigns, the following described
goods and chattels: situated _____

One 1977 Model No. 13 Earthworm tractor with bulldozer
attachments, Serial No. 123456;

One Hole proof water tank, 100 barrel capacity, used,

TO HAVE AND TO HOLD the same unto the said Part y _____ of the Second
Part, his _____ heirs, executors, administrators, and assigns, forever. And
the First Party _____, for ~~itself, its successors~~ ~~and assigns~~ and assigns,
warrant the title to said personal property and do covenant and agree with the
Part y _____ of the Second Part, to defend the said described items of personal
property hereby sold, unto the said Party _____ of the Second Part, his _____
heirs, executors, administrators and assigns, against all and every person
whomsoever.

IN WITNESS WHEREOF, we have hereunto set our hands on
this 22nd day of August, 1977.

GOOD EARTH MOVING COMPANY

ATTEST: _____ By _____
By _____ Secretary _____ President _____

REAL ESTATE MORTGAGE

(INDIVIDUAL)

KNOW ALL MEN BY THESE PRESENTS

That John Smith and Mary Smith, his wife,

hereinafter called Mortgagor, whether one or more, has mortgaged,
and hereby mortgages, to The First State Bank of Pumpkin Center, Oklahoma,

hereinafter called Mortgagee, whether one or more, the following described real estate and premises, situate in
Comanche County, State of Oklahoma, to-wit:

A tract in the Northeast Quarter of the Northeast Quarter of the Northeast Quarter (NE/4 NE/4 NE/4) of Section One (1), Township Four (4) North, Range Eleven (11) West, I.M., more particularly described as follows: Beginning at the Northeast corner of said Section One (1), thence South 207.8 feet, thence West 415.6 feet, thence North 207.8 feet, thence East 415.6 feet to the point of beginning, containing two acres, more or less,

with all the improvements thereon and appurtenances thereunto belonging, and warrant the title to the same

This mortgage is given to secure the payment of the principal sum of Five Thousand (\$5,000.00) dollars, and interest thereon, according to the terms of certain promissory note or notes of even date herewith, signed by the mortgagor, the final payment thereon being due January 15, 1980.

The mortgagor further agrees to maintain insurance acceptable to, and for the benefit of, the mortgagee, upon the buildings on said premises in an amount not less than the indebtedness due the mortgagee. The mortgagor further agrees to pay all taxes and assessments upon said premises before the same become delinquent, and to keep the premises free of any liens or claims which might become prior to the lien hereof. In event of the failure of the mortgagor so to do, the mortgagee may effect insurance or pay such taxes, assessments or other liens and shall have a lien secured hereby for the amount thereof with interest thereon at the rate of ten per cent per annum.

In event the mortgagor defaults in the payment of said indebtedness, or fails to perform the other covenants and agreements hereof, the mortgagee may foreclose this mortgage, as provided by law, and as often as any proceedings may be taken to foreclose this mortgage, the mortgagor agrees to pay to the mortgagee a sum equal to ten per cent of the amount due as attorney's fee, in addition to other sums due, which shall be a further lien secured hereby. Upon the due payment of said indebtedness and the performance of other covenants and agreements hereof by the mortgagor, this mortgage shall become null and void.

The mortgagor, in event of a foreclosure, hereby waives appraisalment of said premises, or not, at the option of the mortgagee to be declared when the petition to foreclose is filed.

Signed and delivered this 22nd day of August, 1977.

John Smith

Mary Smith

INDIVIDUAL ACKNOWLEDGMENT—OKLAHOMA FORM

STATE OF Oklahoma, County of Comanche, SS

Before me, a Notary Public in and for said County and State, on this 22nd day of August, 1977, personally appeared John Smith and Mary Smith, his wife,

to me known to be the identical person ~~who~~ who executed the within and foregoing instrument, and acknowledged to me that ~~they~~ they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

My commission expires

Notary Public

INDIVIDUAL ACKNOWLEDGMENT—OKLAHOMA FORM

STATE OF _____ County of _____ SS. _____
 Before me, a Notary Public in and for said County and State on this _____ day of _____ 19____,
 personally appeared _____

to me known to be the identical person _____ who executed the within and foregoing instrument, and acknowledged to me that
 _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.
 Given under my hand and seal the day and year last above written.

My commission expires _____ Notary Public

REAL ESTATE MORTGAGE (INDIVIDUAL)	FROM	SOUTHWEST TITLE & TRUST Co. Post Office Box 124 OKLAHOMA CITY, OKLAHOMA 73104		RETURN TO
TO				

**Legal Aid, Public Defender
System, and Court Appointed
Lawyers**

By

Arthur Lory Rakestraw

About The Author:

Arthur Lory Rakestraw is the presiding District Judge, Juvenile Division, of the 7th Judicial District, Oklahoma and Canadian Counties.

Judge Rakestraw earned her degrees at the Oklahoma College for Women, William and Mary College, and Oklahoma University.

She is a member of the American Bar Association; Oklahoma Bar Association; Oklahoma County Bar Association (Board of Directors); ABA Standing Committee on Legal Aid and Indigent Defendants; Chairman, Oklahoma Bar Associations Committee on the Delivery of Legal Service; and Board of Directors, Consumer Credit Counseling Services.

Judge Rakestraw was recognized as Citizen of the Year, by Western Oklahoma Chapter of the National Association of Social Workers (1973); Outstanding Woman Lawyer in Oklahoma, by Iota Tau Tau Legal Sorority, Pi Chapter, Oklahoma City University (1975); and Outstanding Professional Woman, by the Business and Professional Womens Club (1977).

LEGAL AID, PUBLIC DEFENDERS, LAWYER REFERRAL SYSTEM, AND COURT APPOINTED LAWYERS

I. Legal Aid

QUESTION 1. What is legal aid?

Legal Aid is a program to furnish free legal services to needy clients in civil actions (as compared to criminal actions). Only the defendant, that is the party being sued, can obtain these free legal services in fee-generating cases. A fee-generating case is one where the recovery of money is sought in the case, and it is presumed that a lawyer can take a part of the amount recovered for his fee. Therefore the plaintiff in a fee-generating case, that is a party who is suing for money, must obtain a private practicing lawyer to file his action. In all other type actions such as divorce, a legal aid lawyer can represent either the party suing or the party being sued.

The first legal aid program was started back at the turn of this century by a small group of lawyers in Philadelphia who agreed to give a certain amount of their time to represent needy clients. These lawyers subsequently decided that better representation could be given to clients if lawyers were hired on a full time basis. They therefore started making individual contributions to fund this type of program. The movement spread across the country until in the mid-nineteen sixties there were legal aid programs in all of the major cities in the country, as well as in many smaller communities. By this time the programs were being funded by Bar Associations and United Appeal Agencies, as well as receiving individual contributions from lawyers.

In 1965 the Act which had created the Federal Office of Economic Opportunity (OEO) was amended to establish a Legal Services Division of that Office, and Congress appropriated funds so that grants could be made to various non-profit organizations across the country to establish legal aid programs. In addition to the expansion of existing programs many new Legal Aid Offices were opened across the country with the funds available through OEO. In 1975, Congress created a new quasi-public corporation called The Legal Services Corporation and the management of the Legal Services program was transferred to this corporation.

OKLAHOMANS AND THE LAW

QUESTION 2. *Who is eligible for legal aid?*

Most legal aid programs across the country including the programs in Oklahoma use the poverty scale established by the Federal Office of Management and Budget (OMB) to determine who is eligible for Legal Aid assistance.

Number of Persons in Family	Gross Weekly Income
One	\$57. or less
Two	\$75. or less
Three	\$94. or less
Four	\$112. or less
Five	\$130. or less
Six	\$149. or less

In order to determine eligibility if there are more than six people in a family, \$18. should be added to the figure of \$149. for each additional defendant. (See schedule at end of article)

QUESTION 3. *How do people obtain legal aid?*

The usual procedure in obtaining Legal Aid assistance is to call a legal aid office to set up an appointment with an attorney in that organization. 'Drop in' clients are usually not able to see an attorney immediately. However, if the individual has an emergency problem or has been summoned to appear in court very soon, and is eligible for legal aid services efforts are made to give them an appointment with an attorney immediately. In cases of extreme hardship a legal aid attorney or a legal intern associated with a legal aid program will call at the residence of a bedfast client to counsel and advise such client. A legal intern is a senior law student with a special limited license to practice law under the supervision of a licensed attorney.

QUESTION 4. *What cities in Oklahoma have Legal Aid?*

Until mid-summer, 1977, there were several legal aid programs in Oklahoma having at least one full time staff attorney. Some of these programs were: 1. The Legal Aid Society of Oklahoma County, Inc., Oklahoma City, (15 lawyers). The S. W. Oklahoma Legal Aid Council, Inc., Altus, Oklahoma which served Jackson, Greer and Harmon Counties, (Altus, Mangum and Hollis). 3. The Tulsa County Legal Aid Society, Inc., Tulsa, (9 lawyers) which also furnished a lawyer to residents of Osage County (Pawhuska) one day a week. 4. The DelawareAdair County Legal Aid Society with offices in Jay and Stilwell. 5. Cleveland County Legal Aid, operated out of the University

of Oklahoma Law Center. (The above list is not intended to be all-inclusive. A current list of legal aid organizations follows this article.)

Additional funding has now been provided to expand the programs in Oklahoma with the state being divided into two divisions. The program in the western half of the state is called the Legal Aid Society of Western Oklahoma, Inc. (LAWO) with headquarters in Oklahoma City. The Oklahoma County program and the program in Jackson, Greer and Harmon Counties are a part of this new LAWO program. The program for the eastern half of the state bears the title of Oklahoma Green Country Legal Aid, Inc., with headquarters in Tulsa and it incorporates the Tulsa program and the Delaware-Adair County program. Additional attorneys will be funded for both LAWO and the Oklahoma Green Country program for lawyers who will circuit ride to other, as yet undetermined, locations. In addition to the limited expansion of these two programs a special division has been created to handle the problems of the American Indian clients who are eligible for legal aid services.

In addition to the above programs with full time staff attorneys, almost every County Bar Association in the state has a volunteer legal aid program of some kind and the members of that county bar association will represent indigent clients in extreme hardship cases. Particularly worthy of mention are the Stephens County Bar Association, which has a part-time secretary in Duncan who keeps records for the organization and refers clients out to members of the Stephens County Bar Association on a volunteer basis, and the Washington County Bar Association in Bartlesville, where retired attorneys serve needy clients

II. Public Defenders

QUESTION 1. How are they appointed and what are their duties?

A Public Defender is an attorney who represents an indigent defendant in a criminal case. There is no statewide public defender program in Oklahoma. Only two counties in the state have full time public defenders. The first is Oklahoma County which has a staff of thirteen full time lawyers. The second is Tulsa County with nine full time lawyers. Two other counties employ one lawyer on a part time basis to serve as a public defender. They are located at Newkirk in Kay County and El Reno in Canadian County. The public defenders in Oklahoma, Tulsa and Kay Counties are appointed by the state district judges in

OKLAHOMANS AND THE LAW

those counties. The part time attorney in Canadian County is appointed by the county commissioners of that county. In every other county in Oklahoma any judge of a state district court who has a criminal case pending before him with an indigent defendant, appoints a member of the private Bar of that county to represent the defendant in that case.

The duty of any public defender is to represent the client, for whom he, or she has been appointed, to the best of his or her ability.

QUESTION 2. *How are Public Defenders paid?*

The salaries of the full time defenders in Oklahoma and Tulsa Counties and the part time defender in Kay County are paid from the Court Fund in each county. This is a fund created by the payment of court costs by persons who file lawsuits in each of these counties. The appointed attorneys in those counties which do not have full time or part time public defenders are paid a fee for each individual case. These fees also come from the court fund of that county. In Canadian County, where the part time public defender is appointed by the County Commissioners, he or she is paid out of the general revenue fund of the Canadian County.

QUESTION 3. *What are their qualifications?*

A Public defender must be a lawyer or a legal intern. Only lawyers may represent clients who are charged with felony cases but legal interns may represent defendants charged with misdemeanors.

QUESTION 4. *What comparable legal services do people have if they don't have public defenders in their area?*

Because the judge hearing a criminal case in any county in Oklahoma will appoint a private lawyer to represent an indigent defendant if there are no public defenders in the county, there is no area in Oklahoma where an indigent defendant in a criminal case will go unrepresented if he or she wants a lawyer. Recent U. S. Supreme Court decisions require that every defendant in a criminal case who faces a possible punishment of incarceration in a jail or penitentiary must be provided a lawyer if he wants one.

QUESTION 5. *Can you have both a public defender and a Court appointed lawyer?*

The answer is 'No.' If you live in a county where there are full time or part time public defenders available, one of these defenders will be appointed for you by the court. If you do not live in one of these four

counties, then as stated above, the judge will appoint a private lawyer to represent you.

QUESTION 6. *What is the work load of an average public defender?*

The full time public defenders in the Oklahoma and Tulsa County offices who handle felony cases each represent from 200 to 250 clients per year. The caseload of those public defenders who handle the misdemeanor cases in these counties is much larger, because these cases are usually not as complicated and can be tried in less time than the felony cases.

III. Lawyer Referral System

QUESTION 1. *How is this system set up and how does it work?*

Lawyer referral systems are almost always organized and operated by County Bar Associations. Bar associations which have lawyer referral panels request lawyers who are willing to serve to indicate the areas of law in which they believe they are proficient. A panel is then prepared covering all areas of the law and listing those lawyers in each of these areas who have designated that they will accept cases falling within these designated areas. A prospective client then goes to the county bar's lawyer referral office, which in most cases is a part of the county bar office, to be referred to the next lawyer on the panel with expertise covering the client's particular legal problem. Assignments are made to lawyers on a rotating basis so that after all of the lawyers on a list have received one case the referral service will start over at the top of the list as additional clients come in. A nominal fee of five to ten dollars is usually charged by the bar association for this referral service and the prospective client is given approximately 30 minutes of a lawyer's time to discuss the case with the lawyer. If at this meeting with the lawyer it is determined that the client has a need for a lawyer and that he desires to have this particular lawyer to represent him, the client and the lawyer will agree on a fee to be paid by the client and when it is to be paid. Some cases such as damage actions for personal injury may be taken by lawyers on a contingency fee basis, that is the lawyer agrees to accept a certain percentage of any amount recovered for a fee if he or she wins the case.

OKLAHOMANS AND THE LAW

QUESTION 2. *Is there a model for this system?*

The American Bar Association has a standing committee on Lawyer Referral Systems which assists bar associations in setting up lawyer referral panels, but each system is structured to fit the needs of the particular community it serves.

QUESTION 3. *How does an ordinary citizen use this system?*

An ordinary citizen uses this system by going to the lawyer referral office of the local county bar association and paying the nominal fee to secure an appointment with a lawyer on the panel. After the appointment is made the individual goes to the lawyer's office at the appointed time and confers with the lawyer as to the legal problem. If the lawyer and the individual decide that the services of the lawyer are needed they then make their own arrangements as to the amount of fee to be paid to the lawyer, when the fee will be paid and any other arrangements that need to be made.

QUESTION 4. *What cities in Oklahoma have this system?*

There is a lawyer referral panel operated by the County Bar Associations of Oklahoma County and Tulsa County located respectively in Oklahoma City and Tulsa.

QUESTION 5. *What is the substitute for those who don't have this system in their areas?*

Those persons who need lawyers outside the Oklahoma City or Tulsa areas must rely on the reputations established by the lawyers in the community in order to determine what lawyers have expertise in which areas.

IV. Court Appointed Lawyers

QUESTION 1. *How are they selected?*

The courts do not appoint lawyers for persons involved in civil litigation. They are appointed only in criminal cases or quasi-criminal matters, and then, only where there is no public defender. A juvenile court proceeding is an example of a quasi-criminal case. The criterion used to

LEGAL AID, PUBLIC DEFENDERS

determine whether a lawyer should be appointed for an individual involved in a court proceeding is whether the individual faces the possibility of losing his freedom by being incarcerated as a result of the hearing. The only areas where this might happen other than criminal areas are in juvenile court proceedings, mental health proceedings and civil contempt hearings where an individual is charged with disobeying an order of a court entered in a civil action. One guilty of such civil contempt may be incarcerated for punishment. The selection or appointment of lawyers for persons charged with criminal offenses was thoroughly discussed in the public defender section.

QUESTION 2. *What are their qualifications and duties?*

The qualifications and duties of court appointed lawyers are the same as for public defenders, question 3.

QUESTION 3. *What is the pay for their services?*

See Public Defender, QUESTION 2.

QUESTION 4. *How can a person get a court appointed lawyer?*

Covered in the section on public defenders.

QUESTION 5. *Does a person have a choice about getting a court appointed lawyer?*

This question was covered in the section on public defenders. The only thing that might be added here is that the individual who is indigent and asks for representation of a lawyer in a criminal matter is not permitted to choose a particular lawyer.

QUESTION 6. *What cities in Oklahoma have court appointed lawyers?*

As was pointed out in the section on public defenders, court appointments of lawyers are made in criminal cases in all counties in Oklahoma. The public defenders are appointed in Canadian, Kay, Oklahoma and Tulsa Counties, and private practicing lawyers in all other counties.

QUESTION 7. *How many court appointed lawyers do we have in Oklahoma?*

It would be difficult to determine without canvassing each county court clerk's office how many lawyers have been appointed to represent

OKLAHOMANS AND THE LAW

indigent defendants in Oklahoma. The number of public defenders in the four counties having public defenders was discussed in the public defender section.

QUESTION 8. *Can you get both a court appointed lawyer and a public defender?*

No. See public defenders, question 5.

☆☆☆

Information immediately following is the most recent information available on locations of legal aid offices in Oklahoma and poverty level information as established by the Office of Management and Budget. These data have been presented by Mr. Stan L. Foster, Executive Director of Legal Aid of Western Oklahoma, Incorporated.

Oklahoma Green Country Legal Aid Society, Inc. (OGLAS)

Office	Counties Served
Tulsa Central Office 630 West Seventh Street Suite 500 Tulsa, Oklahoma 73127 (918)584-3338	Tulsa Osage
North Side Tulsa 1520 North Hartford Tulsa, Oklahoma 74106 (918) 584—4259	Tulsa
Muskogee Branch Office 502 Boston Muskogee, Oklahoma 74401 (918) 683—5681	Muskogee, Okmulgee Cherokee McIntosh Wagoner
Adair County Branch Office P. O. Box 924 Stilwell, Oklahoma (918) 774—2331	Adair

LEGAL AID, PUBLIC DEFENDERS

Delaware County Branch Office P. O. Box 390 Jay, Oklahoma 74346 (918) 253—4980	Delaware
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Office	Other Offices	Counties Served
Cleveland County Legal Aid 300 Timberdell Road Norman, Oklahoma 73019 (405) 325—3702		Cleveland
Legal Assistance Project for the Cheyenne—Arapaho Tribes (LEAPCAT) P. O. Box 581 Watonga, Oklahoma 73772 (405) 623—8515		Blaine

Legal Services Director Legal Aid of Western Oklahoma, Inc. (LAWO)

Office	Counties Served
Oklahoma County—Central Office 600 Colcord Building 15 North Robinson Oklahoma City, Oklahoma 73102 (405) 272—9461	Oklahoma Canadian
Oklahoma County—Neighborhood Office 910 Northeast Fourth Street Oklahoma City, Oklahoma 73104 (405) 235—3659	Oklahoma
Oklahoma County—City Court Defender 217 Civic Center Music Hall Oklahoma City, Oklahoma 73102 (405) 235—0303	Oklahoma

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Shawnee Branch Office
624 North Broadway
Shawnee, Oklahoma 74801
(405) 275—6870

Pottawatomie
Pontotoc, Hughes
Seminole, Lincoln

Altus Branch Office
213 West Walnut
Altus, Oklahoma 73521
(405) 482—7431

Harmon, Jackson
Greer, Tillman
Beckham, Kiowa

Lawton Branch Office
902 'D' Avenue
Lawton, Oklahoma 73501
(405) 248—4675

Comanche, Caddo
Grady, Kiowa

OFFICE OF MANAGEMENT AND BUDGET FEDERAL POVERTY LEVEL GUIDELINE AS OF 7/10/78

Guidelines for All States Excluding Alaska and Hawai

Size of Family Unit	Amount Annually
1	\$3,925
2	\$5,200
3	\$6,475
4	\$7,750
5	\$9,025
6	\$10,300

For family units with more than six members, add \$1,275 for each additional member.

Guidelines for Hawaii

Size of Family Unit	Amount Annually
1	\$4,925
2	\$6,513
3	\$8,100
4	\$9,688
5	\$11,275
6	\$12,863

LEGAL AID, PUBLIC DEFENDERS

For family units with more than six members, add \$1,588 for each additional member.

Guidelines for Alaska

Size of Family Unit	Amount Annually
1	\$4,525
2	\$5,988
3	\$7,450
4	\$8,912
5	\$10,375
6	\$11,838

For family units with more than six members, add \$1,463 for each additional member.

OKLAHOMA COURTS

By

Luther Bohanon

About the Author:

Luther Bohanon was appointed U.S. District Judge for the Western, Eastern and Northern Districts of Oklahoma on August 17, 1961 after a 35-year career in the practice of law.

In 1974, he assumed the status of senior judge, which made way for the appointment of H. Dale Cook for Oklahoma's three districts.

Judge Bohanon was born August 9, 1902 in Fort Smith, Arkansas but his family moved to Stigler, Oklahoma four years later. Another move took the family of 14 children to Kinta where he completed his elementary education. He completed his high school education at Muskogee and in 1922 enrolled in the University of Oklahoma. He entered law school in 1924 and was graduated in June, 1927. The same month he was admitted to practice before the Oklahoma Supreme Court.

He opened a law office in Seminole and a month later accepted appointment as assistant county attorney of Seminole County. He resigned in the spring of 1928 and formed a law partnership with A.P. Murrah in Seminole.

During World War II, Judge Bohanon served in the Judge Advocate Department of the U.S. Army Air Force, holding several high-ranking positions. After the war, he returned to Oklahoma City and continued his law practice until appointment to his federal position.

Judge Bohanon was long active in Democratic Party affairs on the local, state and national levels. He is a Mason and Shriner and a member of the United Methodist Church of Nichols Hills. He married Marie Swatek in July, 1933 and the couple has a son, Richard Lee, an Oklahoma City attorney.

OKLAHOMA COURTS

QUESTION 1. *How many courts are there in Oklahoma?*

Two separate court systems operate within the State of Oklahoma, and each system contains multiple levels of courts. One system involves the courts of the State of Oklahoma and includes the Oklahoma Supreme Court, Court of Appeals, Court of Criminal Appeals, district courts, municipal courts, State Industrial Court, Court of Bank Review, Court of Tax Review and Court on the Judiciary. (The last four can be characterized more accurately as administrative agencies, rather than as courts.)

Also located in Oklahoma are three federal district courts and their bankruptcy courts, all of which are part of the court system of the United States government; The Western District sits in Oklahoma City, the Northern District in Tulsa, and the Eastern district in Muskogee. The United States Tenth Circuit Court of Appeals, headquartered in Denver, Colorado also possesses an office and court room in Oklahoma City where court business is regularly conducted. Appeals from Federal district courts in Oklahoma, Kansas, Colorado, Wyoming, Utah and New Mexico are directed to the 10th Circuit Court of Appeals.

QUESTION 2. *What is the function of each of these Courts?*

A court's function is determined by its jurisdiction, meaning its lawful power or authority to hear and decide controversies, and a court's jurisdiction is established by the terms of the constitution creating the court, and/or by legislative enactments under that constitution's auspices. The federal judiciary, which is the totality of the courts of the United States government, is the creation of the United States Constitution and the Congress, and its jurisdiction entails adjudicating disputes arising under the Constitution and acts of Congress. The courts of the State of Oklahoma are the product of the Oklahoma State Constitution and the Oklahoma State Legislature, and they decide cases arising under the State's constitution and laws.

QUESTION 3. *Do all courts have the same type of jurisdiction?*

District courts, both state and federal, can be described somewhat imperfectly as courts of 'original' and 'general' jurisdiction. 'Original' jurisdiction lies with the court in which a law suit has its first source of existence, as opposed to a court of 'appellate' jurisdiction, which reviews the correctness of the 'lower' court's decision. A court

OKLAHOMANS AND THE LAW

possesses 'general' jurisdiction if empowered with the broad authority to adjudicate or decide all cases committed to the system of law of which that court is a member, absent removal of a particular type of case from that court's jurisdiction by constitutional or legislative provision. The great majority of cases which are brought in federal court are filed in federal district court, and the Oklahoma State District Courts receive the great majority of cases filed in the Oklahoma state court system.

In certain areas of law in which the rules are somewhat specialized and distinct, and benefits are gained from having a court concentrate on one particular problem area, courts of 'special' jurisdiction are sometimes created and empowered to deal with a specific type of case. The jurisdiction of such courts is detailed in the statute under which they are created.

QUESTION 4. *What is the Oklahoma Supreme Court?*

The Oklahoma Supreme Court consists of nine justices appointed by the Governor for a term of six years, each of which justices may gain additional six-year terms by obtaining a majority of 'yes' votes from Oklahoma's electorate in response to the question: 'Shall Justice X of the Supreme Court be retained in office?' Such question is submitted to the state-wide electorate at the general election preceding expiration of the justice's term.

The Oklahoma Supreme Court possesses appellate jurisdiction over all civil cases arising under the laws of the State of Oklahoma, and is the final arbiter, on the state level, of cases committed to other appellate proceedings. The Court of Criminal Appeals possesses appellate jurisdiction in criminal cases. The Oklahoma Constitution vests the supreme court with authority to resolve any jurisdictional conflicts between the two courts.

QUESTION 5. *What is the Oklahoma Court of Criminal Appeals?*

The Oklahoma Court of Criminal Appeals consists of three judges, any two of whom shall constitute a quorum, with the concurrence of two judges being necessary in order for the court to render an opinion. The judges must have the same qualifications as justices of the supreme court, meaning, among other things, they must be at least 30 years of age, and duly licensed attorneys with five years of experience in Oklahoma immediately precedent to their appointment to the court. They too must be retained by the electorate every six years. As

OKLAHOMA COURTS

previously mentioned, the Court of Criminal Appeals possesses exclusive appellate jurisdiction in criminal cases.

QUESTION 6. *What is the difference between the Oklahoma Court of Criminal Appeals and the Oklahoma Court of Appeals?*

Among other things, one handles criminal appeals and the other handles civil appeals. The court of appeals is an intermediate appellate court situated between the district courts and the supreme court, and it renders appellate opinions on civil cases assigned to it by the supreme court. It functions as an appendage to the supreme court, but its decisions are final unless the supreme court grants certiorari. All civil cases appealed from the district court first proceed to the supreme court, where they may then be assigned to the court of appeals. Oklahoma's system of first routing through its highest court cases later assigned to an intermediate appellate court is unique among all the states of the union.

QUESTION 7. *What is certiorari?*

Certiorari (pronounced sir-shuh-RAIR-ee) is a writ issued by a 'high' court to a 'lower' court directing it to send up a particular case for review. Thus, on a petition for a writ of certiorari by the losing party, the Supreme Court may, in its discretion, review decisions of the Court of Appeals or the Court of Criminal Appeals.

QUESTION 8. *Specifically, what type of cases do the district courts handle?*

Cases in Oklahoma's district courts can generally be separated into five broad categories: (1) civil matters; (2) criminal actions; (3) probate proceedings (wherein a deceased individual's 'last will and testament' is established by a court as valid, and its terms are effectuated); (4) juvenile and family relations proceedings; and (5) small claims.

The main categories in federal district court involve: (1) cases arising under congressional laws and the United States Constitution (federal-question cases); (2) controversies between citizens of different states involving more than \$10,000. (diversity cases); and (3) cases in which the United States is a party. Federal district court decisions can be appealed to a United States circuit court of appeals (Oklahoma is situated in the 'Tenth Circuit') and then, if certiorari is granted, to the United States Supreme Court.

OKLAHOMANS AND THE LAW

QUESTION 9. *What is the difference between civil and criminal proceedings?*

Criminal proceedings involve the administration of the criminal laws and the punishment of wrongs against the public. Civil proceedings usually involve controversies between private citizens or between citizens and their government in which private rights are enforced.

QUESTION 10. *What are 'small claims'?*

Small claims defined as claims up to \$600., may be brought in state district court under either the Small Claims Procedure Act or regular district court procedure. Actions under the Small Claims Procedure Act may be heard by any judge of the district court; the judgment is a judgment of the district court, and appeals are taken directly to the supreme court. The procedures are simplified and the costs lower than in regular civil actions, an approach intended to encourage self representation and the saving of attorney's fees.

QUESTION 11. *Does Oklahoma still employ county judges?*

No. Oklahoma courts are now organized on the basis of judicial districts rather than counties, and many districts encompass more than one county.

QUESTION 12. *What is the difference between district judges, associate district judges and special judges?*

Oklahoma district courts are comprised of 'District Judges, Associate District Judges and Special Judges.' (Oklahoma Constitution, Article VII, Section 8(a).) Under present Oklahoma law, district judges and associate district judges exercise identical jurisdiction.* Both categories are comprised of licensed attorneys, and a district judge must possess a minimum of four years' experience as a practicing attorney previous to his appointment. District judges and associate district judges are elected on a nonpartisan ballot for a four-year term.

The district judges appoint special judges, whose jurisdiction in contested matters is limited, unless the parties otherwise agree, to cases where the plaintiff's claims do not exceed \$5,000. Special judges are also empowered to hear 'all uncontested matters.' (20 O.S. §123). Nonlawyers may be appointed special judges when no qualified licensed attorney is available; their jurisdiction is limited to cases where a judgment of not more than \$400. is being sought. In criminal cases, nonlawyer special judges may handle misdemeanors, except that nonlawyers may not hear cases where the punishment prescribed by law

OKLAHOMA COURTS

exceeds a fine of \$200., or imprisonment for 30 days, or both, except by the written consent of all parties.

QUESTION 13. *How does the bankruptcy court operate?*

The U.S. Bankruptcy Court functions as an adjunct to the U.S. District Court, under congressional legislation enacted pursuant to that provision of the U.S. Constitution which grants Congress the power to create 'uniform laws on the subject of Bankruptcies.' (Article I, Section 8.) Straight or liquidating bankruptcy is designed to grant relief to honest, debt-burdened debtors, who must make available for distribution to creditors all non-exempt assets. Exemptions are set principally by State law. Certain debts are not dischargeable, for example: taxes due and owing within three years of bankruptcy, and debts incurred through fraud, intentional tort, or for alimony and support. Under the 1938 Chandler Act, the bankruptcy court also grants debtor rehabilitative relief to persons and companies desiring to make payment of part or all of their debts and to companies desiring to be restructured and continued in operation, rather than liquidated. Bankruptcy court decisions may be appealed to the federal district court.

QUESTION 14. *What are municipal courts?*

They are local courts whose jurisdiction is limited to proceedings arising out of the violation of ordinances or regulations of cities and towns. They may not hear civil actions or conduct proceedings to punish persons for violating State statutes. In every Oklahoma city whose population exceeds 125,000, a municipal criminal court of record exists, whose decisions may be appealed to the court of criminal appeals. (11 O.S. §§781, 782, and 808.) Every Oklahoma town and city is also empowered to create municipal courts not of record, whose decisions may be appealed to the district court. (11 O.S. §§958.1 and 958.14.)

QUESTION 15. *What is a 'court of record?'*

A 'court of record' is one whose official proceedings are recorded verbatim and preserved for future reference.

QUESTION 16. *What is the Oklahoma State Industrial Court?*

The Oklahoma State Industrial Court is a statutory agency created in 1951 as the State Industrial Commission, and renamed in 1959. This

OKLAHOMANS AND THE LAW

court decides workmen's compensation claims and consists of five judges appointed by the Governor, one of whom is designated as the presiding judge. Awards or decisions of the court are final and conclusive unless appealed to the state Supreme court within 20 days. A recently enacted law changes the name of this court to the Workers' Compensation Court.

QUESTION 17. *What is the Oklahoma Court of Bank Review?*

In 1965 the Court of Bank Review was created to hear appeals from the State Banking Board and the State Bank Commissioner, primarily as to applications for new bank charters. Orders of the court are subject to review by the State supreme court by writ of certiorari. Members of the court are district judges, appointed by the Governor with Senate confirmation. The judges serve without additional pay but are reimbursed for travel expenses.

QUESTION 18. *What is the Oklahoma Court of Tax Review?*

The Court of Tax Review, authorized by the Oklahoma Constitution, is composed of three district judges designated by the Governor. Its function is to hear and determine all protests filed against county budgets and tax levies. The judges receive no additional pay but are authorized necessary expenses. The State Auditor serves as clerk of the court.

QUESTION 19. *What is Oklahoma's Court of the Judiciary?*

The Court on the Judiciary was created by constitutional amendment in 1966 and is authorized to conduct proceedings when judges of any Oklahoma court may be subject to removal from office or to compulsory retirement, based on certain charges. It is comprised of judges of other State courts and is empowered to remove judges found guilty of activities incompatible with judicial service, such as 'gross neglect of duty; corruption in office; habitual drunkenness; commission while in office of any offense involving moral turpitude;' and 'gross partiality in office.' (Constitution of the State of Oklahoma, Article 7—A Sec. 1 (1966).)

QUESTION 20. *What is Oklahoma's Judicial Nominating Commission?*

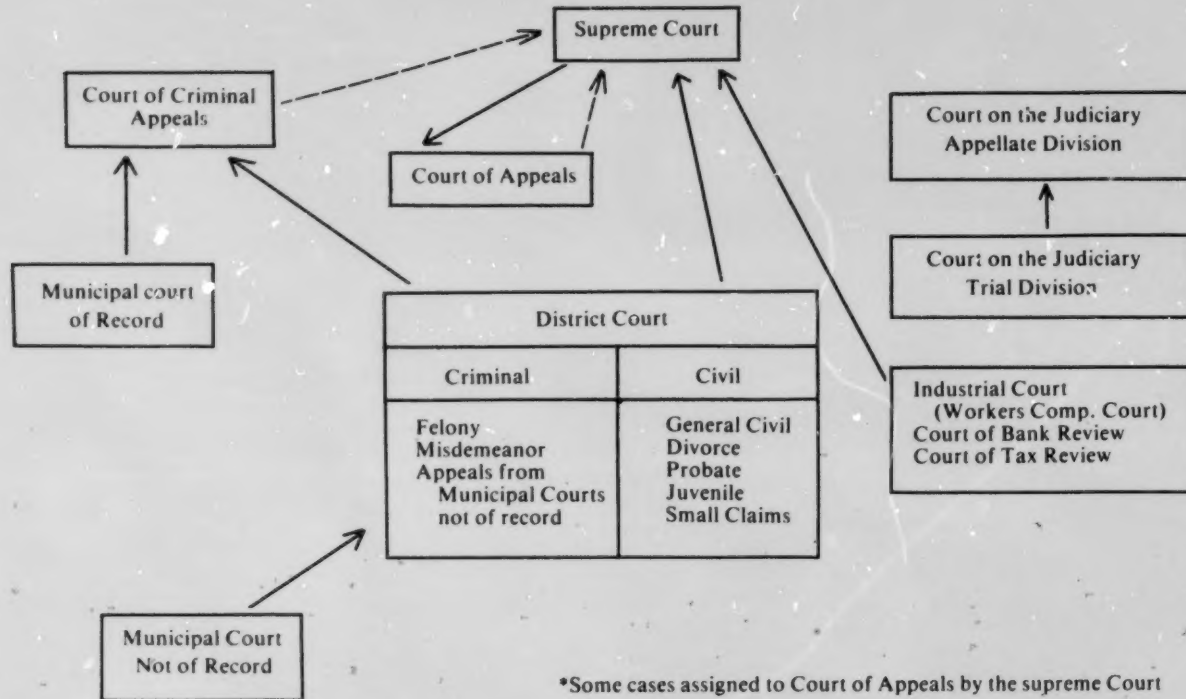
The Judicial Nominating Commission was established by constitutional amendment in 1967 and went into effect in 1969. The purpose of the Commission is to screen and select nominees from whom the

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Governor appoints one to an appellate judgeship when a vacancy exists. It has become accepted practice by Oklahoma Governors to also use the Commission on a voluntary basis when vacancies occur in the Trial Courts.

*"Oklahoma's New Judicial System: George B. Fraser." 21 Okl. L. Rev. 376—378 (1968).

OKLAHOMA'S STATE COURT SYSTEM



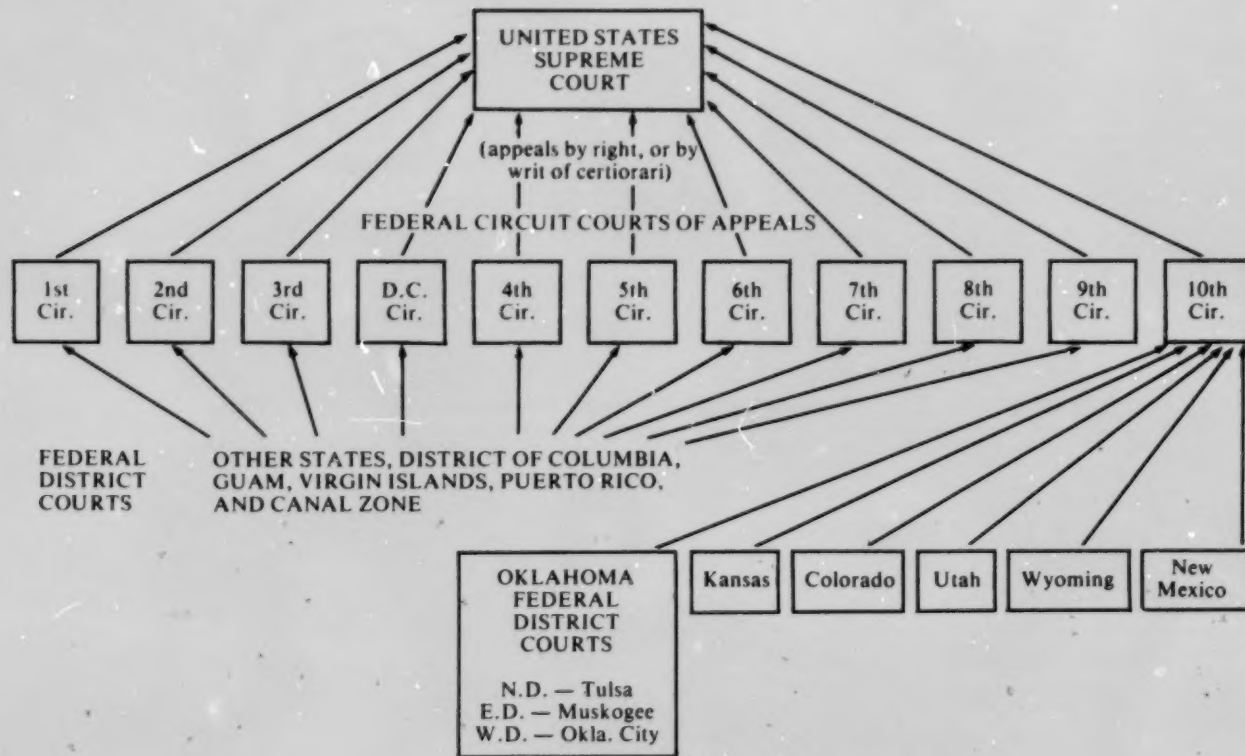
*Some cases assigned to Court of Appeals by the supreme Court



Direct Appeals as a matter of right

Review by writ of certiorari in the discretion of the Supreme Court

FEDERAL COURT SYSTEM



**OKLAHOMA ENVIRONMENTAL
LAW**

**By
Henry A. Meyer, III**

About the Author:

Henry A. Meyer, III earned his B.S. in letters from the University of Oklahoma in 1971, and his J.D. from Georgetown University in Washington, D.C. From 1971—1977 he worked for the Honorable James R. Jones, as a legislative assistant. He is currently practicing law in Woodward, Oklahoma with the firm of Hieronymus, Hodgden, Halley and Meyer.

ENVIRONMENTAL LAW

It is difficult to address the subject of pollution without trying to define it and a good starting point would be to determine what pollution would affect.

First, the environment, which is no modest concept, in that, it embraces the universe and all that surrounds us, but for now we will say that the environment we are concerned about is what we know to be Oklahoma as it is geographically located on a map. The environment of Oklahoma is composed of land, wood, water, air and human beings. We are concerned with the quality of the human environment. An example of urban environmental ills would include noise, traffic, crime, insufficient mass transportation systems and congestion. Environmental law thus focuses upon people from the perspective of their external surroundings, both natural and artificial. If you accept this, then it follows our physical nature, our mental health, our culture and institutions, our opportunities for challenge and fulfillment, our very survival are intertwined in our environment.

Pollution has been defined as a resource out of place. One important fact to consider is that a pollution problem is not necessarily solved by moving it somewhere else. A second step in this analysis, considering pollution as a resource out of place, leads one to connote waste as well as mismanagement as a problem. An example of this would be newspapers that are discarded in suburbia could well be a forest of the future for pulp producers. Finally, if you utilize the definition of pollution as a resource out of place you have to realize that people will use resources and their value is measured by reference to human needs.

Oklahoma passed pollution control acts as early as 1955 when the Oklahoma Water Pollution Control Act passed but this law was repealed in 1972. In 1972 the Legislature did define pollution of the water in Title 82 O.S. Section 926.1:

"'Pollution' means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the State, or such discharge of any liquid, gaseous or solid substance into any waters of the State as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

In 1968 Oklahoma created the Department of Pollution Control and created a Board with various segments of the State's economy represented on the Board. The Board has to meet 10 times a year, and the Attorney General of the State of Oklahoma is legal counsel for the Board. This Board is charged with maintaining quality in air, water, and land. A significant feature of this law is that all rules and regulations created by this Board are, by legislative direction, ordered to be consistent with but not limited to federal law.

The starting point for environmental questions at law is best explained by understanding nuisance. The principles of nuisance create the deepest doctrinal roots of modern environmental law. One of the first nuisance cases, reported by Fitz Herbert in the sixteenth century, involved city officials who permitted swine to run loose distributing their dung in the alleys and lanes resulting in the air being so 'corrupted and infected' that a 'dreadful terror' afflicted the masters and scholars residing there. The question turned on the point that an offense could not be equated in understandable terms because the offense could not be measured.

A private nuisance is a substantial and unreasonable interference with the use and enjoyment of an interest in land. That interference may be intentional, or it may be the result of negligent or reckless conduct or of activity which is abnormally dangerous. The legal issue becomes whether a particular intrusion is sufficiently noxious to give rise to finding a nuisance. It is important to emphasize that liability for a nuisance (private and public as well) must be premised upon substantial harm. This requirement, although not imposing, avoids condemning under the law of nuisance a wide variety of mildly annoying intrusions upon one's neighbor. One important leg of the substantiality test is that the degree of injury be objectively measured, and thus relief may be denied to the peculiarly vulnerable. Another important indicator of substantial harm is whether the actor's conduct is continuous and persistent or inflicts long lasting effects.

In both public and private nuisance litigation, liability can be imposed in situations where the actor is generally free from fault. A balancing test is the best way to describe the decisions that have emerged from court, the social utility has to outweigh the harms and risks it causes for the actor to be held liable. The social utility is made up of the jobs that are created from the activity, or the greater good that is produced from such activity, although it is dangerous. There is growing ground to the approach that the activity may be very useful in general, so that it should not be abated (stopped) and yet required to pay it's own way.

The courts in nuisance cases deem it pertinent to delve into the extent

and character of the hurt inflicted. Thus a very significant factor is the extent of hurt. The law does not concern itself with trivial matters but the substantiality test is not particularly demanding and can be satisfied easily by proving physical damage to tangible property and, of course, by actual harm to human health. Another significant factor is the utility of the offending activity. The clearest case for liability would be where the defendant's action offers little or no socially redeeming value and is easily avoided. On the other hand, jobs are a significant factor to be considered. This test could best be termed the balancing of equities. With the advent of the Industrial Age and progressive development of our understanding of technology in the 50's and 60's another factor the courts and legislature now employ in determining cases and making law is control of nuisance by the best technology. Sometimes by mere implementation of the best technology a nuisance is abated. Another guiding factor is the question: WHO WAS THERE FIRST? Thus, if the City of Red builds an airport in June 1977 on a piece of property and in July of 1977 you build a house by the airport and in January 1978 SST jet planes start landing at the airport and creating noise pollution which you do not think you can live with, you have to overcome the hurdle of moving around the airport after it was built because it is presumed you realized that airplanes would take off and land at the airport and it follows that you should know that airplanes make noise, and the attorney for the airport would in most likelihood prevail over the attorney for the homeowner.

Oklahoma passed a law in 1971, Senate Bill No. 163, which created within the State Department of Health the authority for investigations, studies and research to abate noise pollution. The strange aspect of this legislative action is the fact that the legislature did not grant the State Department of Health authority to enforce its investigations, or to abate noise pollution. The result is that an agency can investigate noise pollution but has no power to curtail it. Moreover, there is no other authority in the State of Oklahoma granted enforcement power by the Oklahoma legislature.

Oklahomans are forced to turn to federal law which gives us relief for certain noise pollution cases, under the National Environmental Policy Act and the Noise Control Act. With the one exception of water, the State of Oklahoma has a low performance record with respect to enactment of legislation to protect the environment. Oklahomans turn to the federal government and its legislation to protect us.

The subject of air, is subjected to supervision and control under the Clean Air Act which represents a comprehensive programmatic and regulatory system, on the subject of air pollution. The Act as passed in

1970 is divided into three titles. Title I covers generally the subject of stationary sources of air pollution. Title II deals with control of emissions from mobile sources, notably automobiles, trucks and aircraft. Title III embraces various administrative and judicial review provisions. The area of greatest notoriety unquestionably is Title II which covers emission standards and forces implementation of emission standards on the automobile industry. The government faces the proposition this year of either penalizing Chrysler Motor Corporation or waiving the penalty. The reason for the dilemma is the government would be acting against its best interests if it forces a penalty, as it affects the antitrust policy of this country which is aimed at promoting competition.

Solid waste and Resource Recovery have been the object of Federal legislation in 1970 with passage of the Solid Waste Disposal Act in 1970 and the Resource Conservation and Recovery Act of 1976. This federal legislation has created the necessary Federal Block Grants for construction of sewer systems that we see throughout our State, and this construction works as a benefit for the Water Pollution Control Act by cleaning up our water systems.

Oklahoma has no State Environmental Policy Act but does have constructive legislation on the books with respect to water pollution. Oklahoma, while enjoying tremendous growth because of its natural base of natural resources such as gas, oil and coal, will have added problems based on the rise in population that will probably be dealt with by our State legislature later in the next decade.

The Federal Environmental Pesticide Control Act has effected a large segment of population in this State and the way that segment works... the agricultural community. The Toxic Substances Act is a spinoff of this legislation and is designed primarily to protect the public from untested and dangerous chemical substances, that can be dangerous to the health of humans.

Finally, it is apparent to most people what a fragile balance holds this community of people together environmentally. It is just as important a factor in this balance to keep people at work and allow the technical forces of capitalism to survive. Such an industry to survive and grow, guarantees a job market and hope for future generations but future generations are only insured if we protect our environment, our water, our air, our land, and our resources.

Environmental law is no modest concept because all of us are dependent upon the environment for our own existence. In Oklahoma and in the United States we are just as dependent upon jobs and the industry that create capital by which we can pay for our needs. There are several ideas that need analysis in any problem involving the environment:

- (1) Can the problem be corrected without any financial loss to either party?
- (2) The problem cannot be corrected but the problem does not outweigh the benefits provided by the industry, such as jobs.
- (3) The problem does not justify continuation of the industry because of the nature of the pollution and the harm it would cause to humans and the best technology has not been employed by the industry.
- (4) The problem does not justify continuation under any circumstances because of the harmful effects to civilization.

The snail darter recently stopped a dam from being finished in Tennessee. This little creature was then reintroduced in various lakes and streams and the federal Court has allowed construction to resume on the dam. Most of us resemble the snail darter, in that, we are not possessed of a large amount of power to guarantee our survival in this world, and the lesson to be learned from this recent experience is that instead of the disappearance of the snail darter we now have both the dam and the snail darter, which is an example of the balancing test we have developed in this outline.

**Oklahoma Insurance
Law
By
Mel C. Bloomfield**

About the Author:

Mel C. Bloomfield earned his B.S. in Business Administration and the LL.B. (Law) from the University of Kansas. He is currently Chairman, Litigation Section, Legal Division, Phillips Petroleum Company, in Bartlesville.

Mr. Bloomfield is a member of the Maritime Law Association of the United States; American Bar Association; Oklahoma Bar Association; and the Washington County Bar Association.

OKLAHOMA INSURANCE LAW

Insurance is a contract in which an insurance company agrees to pay up to a specified amount to a company or individual if the hazard against which the insurance is written occurs. The Oklahoma Insurance Code can be found at 36 O.S. § 101, et seq.

QUESTION 1. *Who administers or regulates Oklahoma insurance laws?*

The Oklahoma Insurance Code is administered by the Oklahoma Insurance Department, which consists of the State Board for Property and Casualty Rates and the Insurance Commissioner. The main goal of insurance regulations is to ensure the insurance companies will have enough money to pay for any insured losses suffered by a policyholder. Regulations also cover such areas as making certain rates and premiums are not excessive, inadequate, or unfairly discriminatory and that policyholders are dealt with in a fair manner.

The Insurance Commissioner must have at least ten years experience in the insurance business or in the Oklahoma Insurance Department. He has jurisdiction over all complaints against any persons or companies who are in the insurance business. He must examine each Oklahoma insurance company at least every three years to make certain that it is financially sound. He may also examine insurance companies of other states or countries which do business in Oklahoma. He issues licenses to insurance companies to do business in Oklahoma annually.

Each company must give him a statement of its financial condition every three months. If an insurance company files a false financial statement with the Insurance Commissioner, it is a felony, punishable by a fine of up to \$5,000, and/or one to five years in jail. All of these requirements are designed to protect you against insurance companies which may not have enough money to pay off claims against them.

QUESTION 2. *What items should an insurance policy contain in general?*

An insurance policy will contain at least these elements:

- a. Names of parties to the contract
- b. Insurer's name and complete address
- c. Subject matter insured
- d. Risks insured against
- e. When the insurance begins and the length of time it will continue
- f. The premium
- g. The conditions

QUESTION 3. *What is a premium?*

The premium is the consideration for issuance of insurance. It is the amount of money you pay for receiving the insurance policy.

QUESTION 4. *What is a binder?*

A binder is a contract for temporary insurance which is issued until a permanent policy can be obtained. It is valid only until the actual policy is issued, or for 90 days, whichever is less. You would obtain a binder if, for example, you bought a new car. You would call your insurance agent, and he would issue a binder until the company could determine what your rates would be.

QUESTION 5. *What is insurable interest?*

Insurable interest is a legal term which establishes a prerequisite for purchase of a legally enforceable insurance policy. A person has an insurable interest in certain subject matter if he will derive some pecuniary benefit or advantage from its continued existence, or will suffer pecuniary loss or damage from its destruction. The subject matter may be a person, such as a husband, wife, parent, or business partner, or it may consist of property such as your home, a diamond ring, your car, or property belonging to some other person which you have a lien against to secure payment of a debt. By way of example, one cannot maintain a valid insurance policy on the life of a stranger since he has no insurable interest in the stranger's life, nor can he purchase insurance on his neighbor's automobile for the same reason.

QUESTION 6. *What is the age one may enter into an insurance contract?*

At age 15 you may enter into a contract for life, health, or accident insurance on yourself or on anyone in whom you have an insurable interest. At age 16 you may contract for other types of insurance. This is an exception to the rule, since persons under the age of 18 are generally presumed to be incapable of entering into a binding contract.

QUESTION 7. *What are the basic types of insurance available?*

The basic types of insurance which you will most likely come in contact with are: life, accident, health, workmen's compensation, property, casualty, vehicle, surety and title.

Life insurance is insurance on a human life. This includes the granting of endowment benefits, additional benefits in case of death or dismemberment by accident, and additional benefits for disability. You

may obtain life insurance only on your own life or on the life of a person in whom you have an insurable interest.

Accident and health insurance are types of insurance protecting you against bodily injury, disability, or death by accident, or disability due to illness. No life, accident or health insurance contract on you may be made unless it is applied for by you, your spouse, or a person having an insurable interest in your life.

Casualty insurance is a broad area that includes liability insurance as well as insurance against burglary and theft, and many other things. Liability insurance insures you against legal liability for death, injury, disability or damage to property of others which you may have caused.

The type of casualty insurance that is known as burglary and theft insurance protects you against loss or damage due to burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation or wrongful conversion, disposal or concealment of property. It includes insurance against loss of or damage to money, gold, securities, valuable papers, and personal effects from any cause. An example would be the insurance you get to cover a diamond ring so that it will be protected not only if it is stolen but also if it is lost.

Another variation of casualty insurance is workmen's compensation or employer's liability insurance which insures the obligations of employers for death, disability or injury of employees.

Other types of casualty insurance protect against glass breakage, malpractice claims (for professionals such as doctors and lawyers) and failure to repay credit (protects creditors if a borrower does not repay his loan).

Property insurance is insurance on real (house and land) or personal (everything else) property, against loss or damage from specific hazards. A common type of property insurance is fire insurance, which insures your property against damage due to fire or lightning. Added property coverage may protect your property against damage due to wind, hail, snow, or ice, or other hazards. You must have an insurable interest to obtain property insurance. Other than owning it, you might have loaned money secured by it or you might lease it.

Vehicle insurance covers you against loss of, or damage to any land vehicle or aircraft, property in a vehicle, and accidental death or injury to persons in a vehicle or caused by being struck by a vehicle. As used in the insurance laws, the term 'motor vehicle' means a self-propelled land vehicle designed for use on public roads. It does not include farm type tractors or farm implements.

Surety insurance is insurance which guarantees that persons who hold positions of trust will perform their duties faithfully or that contracts will be performed. It also covers bonds and guarantees.

OKLAHOMANS AND THE LAW

Title insurance protects the owners of property against loss due to defective titles or adverse claim to title. You would get title insurance when you buy a home.

QUESTION 8. *What are the three types of vehicle insurance?*

There are three basic types of vehicle insurance: collision, liability, and uninsured motorist.

Collision insurance pays for damage to your car if you are at fault. Normally there is a deductible of \$50. to \$250. After you pay the deductible amount the insurance company pays the rest of your damage.

Liability insurance pays for damage your car causes to others or their property if you are legally liable for the damage or injury. Oklahoma law requires all car owners to carry liability insurance.

Uninsured motorist coverage protects you if you are legally entitled to recover damages from the owner or driver of an uninsured or hit-and-run vehicle which causes injury, sickness, or death. This coverage must be included in any motor vehicle liability insurance which is written in the State of Oklahoma.

QUESTION 9. *Why does Oklahoma require all 'car owners to have motor vehicle liability insurance?'*

The Oklahoma Legislature determined that the public good would be best served by requiring all motor vehicle operators to maintain liability insurance for the benefit of victims of automobile accidents. Since all auto insurance policies issued in Oklahoma are required to include uninsured motorist coverage, insured drivers are protected from those who fail to comply with the law.

QUESTION 10. *Who regulates the premium amount on automobile insurance?*

The individual insurance companies are responsible for setting premium rates. Where a person has a poor driving record, or is a good driver but falls within an age group having a high number of accidents, premiums will be higher, since the risk insured against is more likely to occur. The premium rates set by the insurers must stay within the guidelines established by the Insurance Commissioner.

QUESTION 11. *What is the difference between whole life insurance and term life insurance?*

Whole life insurance, also called 'paid-up' life insurance and

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'straight' life insurance is insurance for which premiums are collected so long as the insured lives, to be paid on his death, whenever that may be, to the insured's designated beneficiary. Paid up insurance accumulates cash value as premiums are paid.

Term life insurance is insurance that accumulates no cash value, and will only result in payment of benefits to the designated beneficiary if the insured dies within a stipulated term, whether it be one year, or more, as the insured and insurer might agree by contract.

Your paid up life insurance can be an excellent source from which to obtain a loan. Oklahoma law states that after you have paid three full years' premiums, and while the policy is still in effect, the insurance company must agree to lend you up to the cash value of the policy at not more than 8% per year interest. This is a very low rate of interest so from that standpoint it is a very good source of a loan. Since the law requires the insurance company to lend you up to the cash value of the policy there is no possibility that you will be refused a loan because you have not yet established a satisfactory credit rating. This is especially important while you are young and have not had the time to establish credit. However, your life insurance coverage is decreased by the amount of the loan until it is repaid. Because of this, you should repay any loan on your life insurance cash value as soon as possible to restore your insurance coverage.

QUESTION 12. *Where do I write to file a complaint regarding insurance?*

The Oklahoma State Board for Property and Casualty Rates hears complaints about rates and may issue an order to an insurer to cease any unfair practices, such as the following:

- a. Misrepresentation and false advertising of policy contracts;
- b. Submitting false financial statements to the State Insurance Commissioner;
- c. Unfair discrimination against individuals in issuing insurance contracts:

Complaints should be addressed to:

State Insurance Commissioner
408 Will Rogers Building
Oklahoma City, Oklahoma 73105
Attn: Complaint Department

or call (405) 521—2991 for more information.

THE RIGHT TO INSPECTION
Or
SCHOOL RECORDS AND THE
PRESERVATION OF THEIR PRIVACY

By

John Francis Bates

About The Author:

John Francis Bates is currently a third year student at the Oklahoma City University School of Law. Mr. Bates received a B.A. and M.A. in American History at Southern Illinois University before beginning his law school career. In addition to serving as Law School Division Representative of the American Bar Association at Oklahoma City University, he has served as a member of the school's board of governors and is currently a student member of the Law-Focused Education Committee of the Oklahoma Bar Association.

THE RIGHT TO INSPECTION OF SCHOOL RECORDS AND THE PRESERVATION OF THEIR PRIVACY

I. Background

Traditionally, many school-related records were considered 'confidential.' Many items, especially aptitude test scores and evaluations by the teacher were kept secret even from the student's parents. It was possible, under these policies, for a student's record to contain potentially damaging statements about his ability, personality or conduct. These statements could surface many years later when the student's record was forwarded to an employer, or if the record was examined in connection with a security-related federal job. Also, access to school records varied greatly, depending on local school policy. Often confidential material was given to prospective employers who did not really 'need to know.'

As a result, the Congress passed an amendment to the laws which spelled out the guidelines to be followed by schools which receive public funds. Since almost all schools receive funding from some federal program, it applies to nearly every school. The law is popularly called the 'Buckley Amendment' after its author, Senator James Buckley of New York. The law provides rules for the access of information by parents, the student, and their parties, and limits the government's access to the information as well.

QUESTION 1. What are the parents entitled to see?

The parents have the right to inspect and review all the educational records of their children.

QUESTION 2. How long does the school have to comply?

The school must comply within forty-five days.

QUESTION 3. Is all the information on a student to be freely accessible?

No. The act clearly excepts certain kinds of records. They are:

- (a) records in the sole possession of the person who made them and which are not shown to anyone except for a substitute. (This would be the teacher's personal notes or records, for example.)

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- (b) records of a law-enforcement unit (campus security police) which are kept solely for law enforcement purposes.
- (c) confidential records of a student over 18 years old and older made by a psychologist, physician, psychiatrist, or other professional. (This applies to post secondary students; an elementary or secondary student's records would be available to his parents.)

QUESTION 4. *What about experimental programs? Do the parents have the right to look into these?*

Parents have a right to inspect all instructional materials, including teachers' manuals, films, tapes, or any other supplementary material used in any program designed to explore or develop new teaching methods or techniques.

QUESTION 5. *What if a parent disagrees with the information in his child's record?*

The parents have the right to challenge the content of the child's records. The law states that there must be a hearing to correct any inaccurate or misleading statements. The parents may also insert into the records a written explanation of the contents of the records.

QUESTION 6. *Who besides the parents, has the right to inspect a student's records?*

Basically, anyone with the permission in writing of the parents. In addition, there are several classes of agencies and persons which can receive the information without permission.

- (a) school officials and teachers with a legitimate educational interest (counselors, as an example).
- (b) school officials of a school into which the student is trying to enter, as long as the parents are notified, get a copy of the records and have an opportunity to challenge the record.
- (c) the Comptroller General of the U.S. and several other officials.
- (d) officials in connection with a student's application of financial aid.
- (e) researchers; provided that the student can't be identified and the information is destroyed when no longer needed.
- (f) accrediting organization.
- (g) appropriate persons in an emergency only if necessary to preserve someone's health and safety.

RIGHT TO INSPECT SCHOOL RECORDS

QUESTION 7. *Is there any information which can be released without permission?*

Yes. The law allows the school to release 'directory information.'

QUESTION 8. *What is included in 'directory information'?*

Name, address, telephone listing, date and place of birth, major field of study, participation in sports, weight and height of athletes, dates of attendance, degrees and awards received and most recent former school are all included. However, the school must state what it considers 'directory information' in advance and allow parents to object.

QUESTION 9. *Can you give out a student's class schedule?*

Some institutions have been doing this, but it is not 'directory information' as listed in the statute. The safest course would be to reply that the student is currently enrolled unless some emergency requires that the person requesting the schedule find the student immediately.

QUESTION 10. *What kind of permission has to be given?*

The law requires very specific permission. Blanket permission is not allowed, i.e. the parents can't sign a general release.

QUESTION 11. *What must be specified in the release?*

The records to be released, the reason for the release and to whom the records are released must be included.

QUESTION 12. *Can a court get the records?*

Yes. They can be subpoenaed or obtained through judicial order but the parents and student must be notified in advance.

QUESTION 13. *What about students over 18?*

Once a student is over 18, he has the rights of a 'parent' under this law. If he is still dependent on his parents, however, his parents retain their right to look at his records.

QUESTION 14. *Is there any information a student over 18 cannot get from his own records?*

Yes. A student in a post secondary school can't get:

- (a) the financial records of his parents.
- (b) letters of recommendation made before Jan. 1, 1975.
- (c) material covered by a waiver of access.

QUESTION 15. *What is a 'waiver of access?'*

Sometimes in an application for admission, a job, or an honorary program (such as a scholarship) confidential recommendations are solicited and made part of a student's record. The student, in making his application for these reasons signs away his right to inspect these records. He does, however, retain the right to know who made the recommendations.

Note:

This has been an attempt to interpret a law which really has ramifications not fully explored as yet. The policy which underlies the law may be of some help in practical situations. Generally, parents are allowed unlimited access and a right to challenge the records. With few exceptions no one has the right to inspect the student's records without permission.

SMALL CLAIMS COURT

By

Bill V. Wilkinson

About The Author:

Bill V. Wilkinson is a practicing attorney in Tulsa, Oklahoma and a partner in the firm of Chapel, Wilkinson, Riggs, Abney & Keefer. He is a member of the Tulsa County Bar Association, Oklahoma Bar Association, American Bar Association, Oklahoma Trial Lawyers Association, and is a member of the Board of Directors of the Oklahoma Trauma Research Society. Mr. Wilkinson is Chairman of the Citizenship Education Committee, a special committee of the Oklahoma Bar Association, in charge of the 'Law Focused Education Program' in the State of Oklahoma. Mr. Wilkinson is also Chairman of the Emergency Medical Services Citizens Advisory Council, a citizens group functioning within the Oklahoma State Department of Health. Mr. Wilkinson has been admitted to practice before all courts within the State of Oklahoma, the United States District Court for the Northern District of Oklahoma, and the United States Court of Appeals for the Tenth Circuit in Denver, Colorado.

SMALL CLAIMS COURT

In 1968, Oklahoma adopted as part of its judicial reform program an entirely new law which created a special court known as the 'Small Claims Court.'

QUESTION 1. *What was the purpose of the law setting up the Small Claims Court?*

The purpose of the law was to create a new court where private citizens could settle their differences and resolve disputes where the amount in controversy did not exceed the sum of \$400., and where the procedures could be expedited by simple proceedings.

QUESTION 2. *What advantages does this Court provide?*

The Small Claims Court was designed to enable private citizens to litigate and resolve their differences without the necessity of hiring an attorney or without the necessity of becoming involved in the complicated procedures normally required for law suits.

QUESTION 3. *Where is the Small Claims Court usually located?*

The Small Claims Court is actually a part of the District Court located in each county and is usually located in the Courthouse although from time to time special locations for Small Claims Courts are designated. Although the Small Claims Court is actually a division of the District Court in each county, it is nonetheless separate in that the Small Claims Court has a separate clerk to assist individual citizens in filing of their claims, and a separate Judge to hear such claims. The location of the Small Claims Court and the Clerk can be found easily by calling or visiting the District Court at the County Courthouse.

QUESTION 4. *What is the monetary limit for this Court?*

The Small Claims Court is available for virtually any type of civil claim (as opposed to criminal) which an individual citizen or company has. The original monetary limit of \$400. was increased in 1976 to the sum of \$600.

QUESTION 5. *Who may bring suit in a Small Claims Court?*

Almost any person or company who claims that some other person or company is indebted to them for a sum of \$600. or less may bring the

action in the Small Claims Court and, if they wish, may handle the matter in the entirety by themselves. Such indebtedness could arise from the sale of merchandise, lending of money or property, breach of contracts to perform services, failure to pay rents, negligence actions where injury or damage has occurred through the fault of another such as, for example, an automobile accident, or any other of a wide spectrum of situations giving rise to civil liability or indebtedness from one person to another.

QUESTION 6. *What two exceptions are made in regard to filing suit in Small Claims Court?*

The law creating the Small Claims Court makes only two exceptions. First, the law specifically exempts liable or slander actions and prohibits the bringing of these types of suits in Small Claims Court. Secondly, the law provides that a collection agency, collection agent, or any assignee of a claim may not attempt to collect money in the Small Claims Court.

QUESTION 7. *Are jury trials allowed in Small Claims Court?*

Unlike other cases before the District Court, the parties involved in a Small Claims case are not entitled to a trial by jury and all such cases are tried only by the judge. If a defendant who has been sued in the Small Claims Court desires a trial by jury, then he must take the proper action to remove the case from Small Claims Court to the District Court where he may request a jury trial.

QUESTION 8. *Why are more informal rules of evidences allowed in the Small Claims Court?*

In the trial of the case before the Small Claims Court, the parties may introduce testimony by means of witnesses or other exhibits, but the formal and often complicated rules of evidence traditionally applied in the courtroom are applied more informally by the judge inasmuch as a majority of the trials are conducted by non-lawyers unfamiliar with such rules. The actual wording of the Act concerning the trial proceedings provides as follows: 'The hearing and disposition of such actions shall be informal with the sole object of dispensing speedy justice between the parties.'

QUESTION 9. *What is the procedure for beginning a suit in the court?*

The procedure for commencing a suit in the Small Claims Court is

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also simple. The new law provides for the person bringing the suit to file a 'pleading' or affidavit. This simply involves filling in the blank spaces on a printed form. The printed forms are maintained by the Clerk of the Small Claims Court and the law even provides that the Clerk shall assist the person in preparing the document in a proper manner. The only information to be furnished by the individual is the name of the other party, the amount of the indebtedness, the address of the other party and a description of personal property if possession of such property is sought. The individual bringing the suit then signs an affidavit that the information is correct and the Clerk sets a date for the hearing in the Small Claims Court (usually within 30 days), and the affidavit and the order for the hearing are both mailed or delivered by the sheriff to the other party. The cost for filing such a suit is \$7, unless possession of personal property is sought and then the cost is \$15.

QUESTION 10. *Why did the Oklahoma Bar Association sponsor and endorse the Small Claims Court?*

The creation of the Small Claims Court in Oklahoma represents an innovation in our judicial system. The new law represents a departure from tradition inasmuch as the purpose of the law is to substantially simplify and expedite the court proceedings and to enable them to be conducted without the assistance of an attorney. Since its adoption in 1968, the Small Claims Court has performed well and served its purpose in helping to quickly resolve small claims between individuals and companies. The Oklahoma Bar Association sponsored and endorsed the concept of a Small Claims Court because of the overcrowding of trial dockets which were often overburdened with such claims involving smaller amounts and because such disputes should be resolved without requiring the time and thus the expense of the legal profession. The creation of the Small Claims Court offers a timely example of how the law and the judicial system are constantly changing in order to better meet the needs of the society which they serve.

WILLS
By
**Harry McMillan and
Joe Sam Vassar**

About the Authors:

Mr. Harry McMillan graduated from the Oklahoma University College of Law in 1953. While in law school, Mr. McMillan served as Editor-in-Chief of the Oklahoma Law Review. Since beginning the practice of law he has served as a member and vice-chairman of the Board of Bar Examiners of the State of Oklahoma. From 1971—1975 he served as general counsel to the Oklahoma Turnpike Authority.

Mr. McMillan served on his military duty with the United States Air Force. He was on the Judge Advocates Staff at Carswell Air Force Base.

Mr. Joe Sam Vassar joined Mr. McMillan in Bristow, Oklahoma in 1974. Prior to 1974, Mr. Vassar practiced law in Oklahoma City as a member of the legal staff for Southwestern Bell Telephone Company. He is a graduate of the Oklahoma University College of Law, graduating in 1970. As member of the group of law students in the upper ten (10%) percent of his class, Mr. Vassar was elected to the Order of the Coif.

WILLS AND ESTATES IN OKLAHOMA

QUESTION 1. *What is a will?*

A will is an instrument in writing, drawn and signed in accordance with law, by which a person directs what is to happen to his or her property after death. The person making a Will is called a 'testator,' if he is a man, or a 'testatrix,' if she is a woman. In former times, a 'Will' was an instrument that provided for the distribution of real estate while a 'testament' dealt with all other kinds of property. Now, the distinctions have been abolished and we refer to the document as simply being a 'Will' or as the 'Last Will and Testament.'

QUESTION 2. *Who can have a Will?*

Any person over the age of eighteen is old enough to have a Will. The person also has to be mentally able to know his assets and who his heirs ought to be, and it must be done of his own free will and accord.

Question 3. *Can a Will be handwritten?*

Yes, a handwritten Will is known as a Holographic Will. It is valid so long as it is entirely written, dated and signed in the testator's own handwriting, and shows clearly that it is intended to be a Will.

QUESTION 4. *Are there other types of Wills?*

The normal type of Will is one which is typed, signed by the testator and witnessed by two witnesses who attest that certain legal requirements were complied with. Another rare type of Will is called a Nuncupative Will. This is an oral Will made by a person in military service, actually engaged in combat, and in fear of death, and is good only for estates of \$1,000. or less.

QUESTION 5. *Who should draw a Will?*

Because there are many legal requirements involved in making a valid Will, it is generally recommended that only lawyers draw a Will. Persons who use the services of a notary public or who attempt to fill in the blanks on a form run the risk of the Will being declared invalid.

QUESTION 6. *After a Will has been made, can it be revoked?*

Yes, the person making the Will can revoke the Will at any time before he dies, simply by making another later Will, destroying all

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copies of the Will, or by writing across the face of the Will words indicating that it is his intention to revoke and cancel it.

QUESTION 7. *Is there anyone that cannot be disinherited by a Will?*

Yes, a spouse cannot be kept from inheriting his or her statutory share of a person's property without the spouse's consent. In other words, if a man makes a Will which leaves to his wife less than she would have received if there were no Will, the law will set aside the Will to that extent and see that she received her statutory share of the property. The spouse is therefore sometimes referred to as a 'forced heir.' Children or other relatives can be disinherited by Will.

QUESTION 8. *What effect does divorce have on inheritance?*

If a person dies without a Will, his or her divorced spouse is not an heir. Divorce also revokes all provisions in an existing Will which benefit the divorced spouse.

QUESTION 9. *What are the Oklahoma Statutes governing Wills and Estates?*

In Oklahoma, the laws governing Wills and Estates are found in Title 84 of the Oklahoma Statutes (Wills and Succession) and in Title 58 of the Oklahoma Statutes (Probate Procedure).

QUESTION 10. *If a person dies and this Will leaves some property to me, does that automatically make me the owner of the property?*

Not entirely. Before you would have complete ownership of the property, the Will must be 'probated.' This means that it must be proved as a valid Will in the District Court, all debts of the deceased person must be paid, the property must be inventoried and appraised, taxes must be paid, and all other requirements of the law concerning probate procedure must be complied with. Then, the Court will make an Order which says in effect that you are the owner of the property. This Order then goes on record like a deed, and the property is then completely yours.

QUESTION 11. *Who takes care of the deceased person's property while the Will is in probate?*

An Executor (male) or Executrix (female) usually appointed by the Will has the responsibility for the deceased person's property during

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the probate, but a lawyer selected by the Executor does the legal work that is required.

QUESTION 12. *What do the words 'testate' and 'intestate' mean?*

The word 'testate' simply means that a person has died and has a valid Will. 'Intestate' means that a person has died without a Will.

QUESTION 13. *What happens if a person owns property when he dies and he has no valid Will?*

The persons who then succeed to the ownership of the property are called 'heirs' and they are determined by the statutes found in Title 84 of the Oklahoma Statutes.

QUESTION 14. *What are some of the more common examples of intestate succession in Oklahoma?*

1. A person dies without a Will leaving a spouse and one child. His property will then be divided equally between his wife and child.
2. A person dies without a Will leaving a spouse and more than one child. His property will be divided one-third to his spouse and the other two-thirds will be divided equally among his children.
3. If a person dies without a Will and leaves no spouse and no children or other descendants, then his property is divided equally between his parents.

Other situations where a person dies without a Will are too numerous and complicated to go into here, but nearly every conceivable situation is provided for by the statute or the interpretation of the statute by the Court.

QUESTION 15. *What is an 'estate'?*

An estate is all of the property of a deceased person which is passed to the beneficiaries by the person's Will or to his heirs by the statute of succession.

QUESTION 16. *If one of my relatives dies leaving some property and under the statute I am his heir, does that automatically make me the owner of that property?*

Not entirely. Almost the same procedure is required as that explained above in the case of Wills, except that when a person dies without a Will, the procedure is called 'administration,' the person who has

charge of the decedent's property during administration is called an Administrator (male) or Administratrix (female), and the Administrator or Administratrix is selected by the Court having charge of the administration proceedings. The persons having prior rights and eligibility to be Administrator or Administratrix are described in the statutes.

QUESTION 17. What is estate and inheritance tax, and who pays it?

Generally speaking, estate tax is the same thing as inheritance tax. It is a tax placed upon property that is transferred from a deceased person to a living person. The tax is paid by the Executor or Administrator out of the assets of the deceased person's estate. In other words, it is deducted from the property before it comes into the hands of the heir or beneficiary. The estate taxes are payable to both the State of Oklahoma and, in larger estates, to the United States Government. There are many exemptions and deductions allowable against the estate tax. For instance, in Oklahoma, all property passing from a deceased person to his or her spouse is not subject to estate taxes. A lawyer should be consulted to prepare an estate tax return so that all deductions and exemptions allowed by law may be taken.

QUESTION 18. Is the property which I receive by Will or inheritance subject to income tax?

In most instances, it is not subject to income tax. A lawyer or other tax specialist should be consulted to determine this.

QUESTION 19. Why should I have a Will?

Many times the testator may desire to leave his estate, or part of it, to persons not provided for in the statute or in different proportions. By Will, he can do this. Also, a Will can give an executor powers that he would not otherwise have, such as the power to sell real or personal property without Order of the Court. A person may also be able to gain tax savings by use of a Will. These are only a few of the advantages to having a Will. Only a lawyer will be able to advise you about the best means of doing these things, and only a lawyer is trained to put the proper words in a Will to effect these purposes.

QUESTION 20. What effect does divorce have on a Will?

Under 84 O.S. §114, where a married couple is divorced, and while married, either of them has made a Will leaving property to the other,

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those portions of the Will are automatically revoked, but the rest of the Will remains valid.

**A MINI-DIGEST OF DECISIONS OF THE
OKLAHOMA APPELLATE COURTS
INTERPRETING THE JUVENILE CODE**

**By
Glenn Dale Carter**

About the Author:

Glenn Dale Carter, born October 30, 1936, graduated from Tecumseh High School in 1954; received his Bachelor Degree from Oklahoma Baptist University in 1958; received his LLB from the College of Law at the University of Oklahoma in 1962. Judge Carter is married to Kathryn and they have one daughter Mary Cecile. Judge Carter and his wife enjoy studying the history of Pottawatomie County and spend their spare time tracing their family roots.

Judge Carter served as Assistant County Attorney from February, 1963, through January, 1967, at which time he was elected County Judge (later changed to Associate District Judge). Since 1967, he has presided over the juvenile and mental health dockets. He presently presides over the domestic relations docket also, and has in the past presided over the probate and criminal dockets.

A MINI-DIGEST OF DECISIONS OF THE OKLAHOMA APPELLATE COURTS INTERPRETING THE JUVENILE CODE

QUESTION 1. *How does a petition commence in Oklahoma?*

The Court held in *Crandell vs. State*, 539 P2d 398(1975), that the provision of 10 O.S. 1103 requiring the juvenile proceeding to be commenced by the filing of a verified petition is mandatory and that the cause cannot be commenced by the filing of a criminal information. This result obtains even in instances where the discovery of the juvenile's age did not occur until after the filing of the criminal information and a transfer is effected pursuant to 10 O.S. 1112(a). Likewise it was held in *Irene Faye Lone Wolf, Plaintiff in Error vs. State of Oklahoma* and the *DISRS of the State of Oklahoma, Defendant in Error*, 470 P2d 1014 (1970), that the petition must be verified.

QUESTION 2. *Do Oklahoma statutes provide for any age and sex differential on a certification or criminal prosecution?*

There has been substantial litigation concerning the age and sex differential provided for by earlier Oklahoma Statutes and while the issues are for the most part now limited to application in a certification and criminal prosecution context, a review of the evolution of these distinctions is indicated.

The 1968 revision of the juvenile law maintained the differential in which the jurisdictional age limit of children based upon sex which had previously existed under 10 O.S. 101. The 1968 Act provided: 'The term 'child' means any male person under the age of sixteen (16) and any female person under the age of eighteen (18) years.' Thereinafter, the Second Regular Session of the 32nd Legislature in 1970 enacted a revision which defined a DELINQUENT child as a male person under the age of sixteen (16) years and a female person under the age of eighteen (18) years, who had violated any federal or state law or municipal ordinance, excepting a traffic statute or ordinance, or any lawful order of the court made under this act; or a child who has habitually violated traffic laws or ordinances other than in the delinquency category. This Act provided for a uniform Under-Eighteen-Years-Of-Age application to both males and females in the Child in Need of Supervision and Dependent and Neglected Child categories. On the final day of the session, the same Legislature adopted Senate Concurrent Resolution No. 93 designed to express legislative intent that DISRS institutions were

not to be utilized through In Need of Supervision adjudications and commitments as an alternative to criminal proceedings arising out of delinquent acts committed by males between the ages of 16 and 18. Additionally, the same session adopted Sec. 1101(a) which in its second section re-stated the heretofore mentioned definition of a delinquent child.

The constitutionality of the distinction predicated upon sex was adjudicated in *Dann; Ray Lamb and Odie Lee Reed, Plaintiffs in Error vs. State of Oklahoma, Defendant in Error*, 475 P2d 829 (1970). In these cases, the Defendants had suffered felony convictions for separate offenses of Burglary of an Automobile, the Defendant Lamb having entered a plea of guilty and the Defendant Reed having been convicted by the Court after a plea of not guilty and waiver of jury trial. The Defendants urged that the different age limits for males and females provided for in 10 O.S. 1101(a) supra violated the equal-protection provisions of the 14th Amendment to the U.S. Constitution. The Court unanimously held that '... the Statute exemplifies the legislative judgment of the Oklahoma State Legislature, premised upon the demonstrated facts of life...' Re-hearing in the instant causes was denied on October 6, 1970.

Likewise in *Johnson vs. State of Oklahoma*, 476 P2d 397 (1970), the same issue of unconstitutionality was raised and, again, a unanimous court rejected the argument. The same issues were raised and the same results were obtained in: *Manis vs. State of Oklahoma*, 482 P2d 948(1971). *Coyle vs. State of Oklahoma*, 485 P2d 256(1971); *Benson vs. State of Oklahoma*, 488 P2d 383(1971); and *Coyle vs. State of Oklahoma*, 498 P2d 223(1971).

Then on March 16, 1972, the U.S. Court of Appeals, 10th Circuit, in *Lamb vs. Brown*, 456 F2d 18, held that the Oklahoma Statute allowing females under age of 18 benefits of juvenile court proceedings while limiting same benefits to males under age of 16 violated the equal protection clause. The Court said: '...demonstrated facts of life' could mean many things. The 'demonstrated facts' which the Court (Oklahoma Court of Criminal Appeals) relied upon are not spelled out. They are not obvious or apparent. We have not been presented with a logical constitutional justification for the discrimination inherent in 10 O.S. 1101(a).' The Court further provided that the ruling should not apply retroactively.

Responding immediately in *Shaffer vs. Green* 496 P2d 375 (March 27, 1972), the Oklahoma Court of Criminal Appeals in what must be viewed as a study in judicial frustration and mental anguish as well as a comprehensive study of Oklahoma law on the jurisdictional age of

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juveniles, the 3-member Court in an opinion, specially concurring opinion, and dissenting opinion, undertook to apply *Lamb vs. Brown*, supra, and provide guidance to obtain future stability and uniformity. The Court adopted the 10th Circuit's unconstitutionality posture, surveyed the entire juvenile law and found all provisions of the Juvenile Code relating to this subject to be constitutionally defective under either the equal protection clause of the 14th Amendment to the U.S. Constitution, or multiple subject and failure to express subject in title provisions of Article 5, Sec. 57 of the Oklahoma Constitution. The Court's majority found that the applicable law was a 1910 Act found in the Criminal Code permitting certification between ages of 7 and 14, and adult prosecution at age 14.

The Oklahoma Legislature was in session when the *Lamb vs. Brown* and *Schaffer vs. Green* debacle occurred, and hastened to pass House Bill #1705 which became effective on April 4, 1972, at the hour of 4:00 P.M. It provided for the current status of the law that juveniles are, for all categories actionable under the Code, persons under the age of 18 years with no distinction predicated on sex. Ten (10) days after the effective date of the Act, the Court of Criminal Appeals in *Freshour vs. Turner, Sheriff*, 496 P2d 389, again with an opinion, specially concurring opinion and a dissenting opinion, held H.B. #1705 supra not to have retroactive application and promulgated the guide lines that: (1) infants committing acts which if an adult would constitute a crime between 1941 and before 4:00 P.M. on April 4, 1972, and had not reached their 14th birthday on the date of the commission of the act, must have a certification hearing prior to adult prosecution. If during such period of time the offense occurred after passage of their 14th birthday, no certification hearing was required; (2) For acts occurring after 4:00 P.M. on April 4, 1971, any juvenile could not be prosecuted as an adult if the child was under the age of 18 years, without a certification hearing.

Pre-LAMB vs. BROWN Convictions Constituting 2nd Offense Predicates

In *Fields vs. State*, 506 P2d, 919, and *Stevens vs. State*, 510 P2d 691, a divided Court of Criminal Appeals held that convictions occurring prior to the effective date of *Lamb vs. Brown* supra (March 16, 1972) could properly be used to enhance punishment in second offense prosecutions.

Retroactive Application of LAMB vs. BROWN

Lamb vs. Brown assumed an enhanced aura when a divided U.S.

Court of Appeals, 10th Circuit, in attempting to reconcile contrary rulings by Oklahoma Federal District Judges Daugherty and Barrow relating to the retroactive application, held that *Lamb vs. Brown* is to be applied retroactively, in *Radcliff vs. Anderson*, 509 F2d 1093, in June, 1974. Subsequent to the decision, a divided Court of Criminal Appeals of the State of Oklahoma held that the above decision of the 10th Circuit Court was void and not binding on the State of Oklahoma or any courts thereof, and accordingly in *Dean vs. Crisp, Warden*, 536 P2d 961 (1975) refused to apply the *Radcliff vs. Anderson* doctrine.

Yet to be resolved are apparent inconsistencies and discriminations relating to age and sex found within the Juvenile Code. 10 O.S. 1101 defines a child as any person under the age of 18 years. A cursory examination of this provision would indicate that a person over 18 years of age is not a child. However, the following section provides that: 'When jurisdiction shall have been obtained over any child, it may be retained until the CHILD becomes twenty-one (21) years of age.' (emphasis added). That the Court of Criminal Appeals regards the 21 year jurisdiction provision as viable is demonstrated by the Appellate Court's calling the trial court's attention to this provision in May, 1976 in *Brown vs. State*, 470 OBAJ 1224. To further complicate matters, Sec. 1139 (b) provides that adjudicated delinquents in DISRS custody who have not been otherwise discharged shall be discharged when the child becomes 18 years of age if a female and 21 years of age if a male.

If the potential for chaos predicated upon (a) sex and age distinctions, and (b) attempting to extend jurisdiction beyond the Statutory definition of age of a child were not sufficient, this Section further flirts with Constitutional disaster by providing: '...that the court which adjudicated the person delinquent may, upon petition of the Department, retain legal custody of the child.' Whether or not this Section contemplates such custody being permanent and extending to death of the person is not spelled out.

No Oklahoma cases are found, but it is assumed that Oklahoma would be in accordance with the construction in *Allen vs. Arkansas*, 488 S.W.2d 712(1973), that the ages prescribed for juvenile jurisdiction '...means chronological age, not some 'mental' age arrived at by psychological tests.'

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QUESTION 3.

What is the exercise of concurrent jurisdiction over juveniles regarding juvenile proceedings and custody proceeding in Oklahoma?

The exercise of concurrent jurisdiction over juveniles by the District Court pursuant to juvenile proceedings and the custody proceedings in divorce or separate maintenance proceedings presents a jurisdictional dilemma.

The Court held in *Hughes vs. Bowen*, 143 P2d 139(1943), that upon the death of the parent exercising custody of minor children by virtue of divorce decree custody order, custody automatically reverted to the surviving parent unless the jurisdiction of the Court had otherwise been invoked through juvenile or guardianship proceedings.

In *Stratton vs. Steele*, 519 P2d 469(1974), the Court considered the question of concurrent proceedings resulting in incompatible custody orders and the opinion would appear to hold that if the child was subject to custody order in a prior divorce proceeding, that the divorce custody order would control over a subsequent juvenile proceeding. It should be noted that this action grew out of a delinquency proceeding. The case has no language which would seem to limit the application of the exclusive jurisdiction rule to divorce and separate maintenance and custody orders emanating therefrom of the courts within the State of Oklahoma. This case is discussed and criticized in Vol. 27, Oklahoma Law Review, p. 754. It would appear from this case that conditions precedent to the imposition of this rule are (1) that the right to fix custody have previously attached in another court of equal jurisdiction, and (2) that this prior right be timely asserted in the juvenile proceedings. Also, *Smith vs. Porter*, 535 P2d. 281 (1975) touched upon this issue.

QUESTION 4.

What is an effect of dismissal?

In the Matter of *Allen Dale Howard*, 515 P2d 1399(1973) was a case wherein the juvenile was proceeded against in a delinquency action alleging rape upon a 4-year old child. At the conclusion of the trial, the court found the evidence did not sustain the allegation. However, the Court found that the juvenile had committed the offense of Indecent Exposure and pursuant to this finding, adjudicated the child to be delinquent. The Court of Criminal Appeals reversed the adjudication and held that to sustain the adjudication would allow the Court to adjudicate the juvenile delinquent for any offense the evidence might reveal and thereby deny the juvenile the right of notice of the grounds upon which the adjudication was being pursued.

After reversing the adjudication, the Court of Criminal Appeals recommended the trial court 'consider a course of action under authority of 10 O.S. 1116 which would provide psychiatric treatment.' An examination of Sec. 1116 reveals that this section provided: 'the following kinds of orders of disposition may be made in respect to wards of the court'(emphasis added). The confusion resulting from the Court's reversal of the adjudication but recommending that the Court enter an order of disposition to effect psychiatric care for the juvenile, was addressed by the Supreme Court in *Smith vs. Porter*, 46 OBAJ 832. The parents were divorced in Delaware County, the mother was awarded custody and the custody order was subsequently modified and custody placed in the father. While the children were in custody of the father in Muskogee County, the mother petitioned the Muskogee County District Court to adjudicate the children Dependent and Neglected. The adjudicatory trial resulted in the petition being denied, but the juvenile division of the Muskogee County District Court attempted to retain jurisdiction.

Without deciding the concurrent jurisdiction issue, the Court held that the dismissal of the petition terminated the case and the Juvenile Division could exercise no further jurisdiction over the juveniles. This post-*Stratton vs. Steele* case noted that the Muskogee Court's jurisdiction was not challenged at the time of the adjudicatory trial.

QUESTION 5. *What is a traffic offense?*

Section 1101 (b) excludes from the definition of delinquency violations of State Statute or city ordinance which are in the nature of traffic violations unless such violations are habitual. What constitutes the traffic offense has never been defined by the Oklahoma courts. Traditionally, a distinction has been made between proscribed acts and omissions, which involve mens rea or criminal intent to commit a criminal act or omission, as distinguished from those violations which were regulatory in nature and which were actionable, regardless of the mental capacity and state of mind of the violator. Generally, ordinances and Statutes prescribing rules for the use of public roads, highways and thoroughfares are regarded as regulatory in nature.

Considerable disparity appears to exist among the judges in the approach of the traffic offense exception. Some take the view that prohibited acts and omissions found in Title 47 of the Oklahoma Statutes (Motor Vehicles) constitute traffic offenses and prohibited acts and omissions found under other titles are non-traffic.

If we employ the earlier view, Negligent Homicide (47 O.S. 11— 903)

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is a traffic offense. Unauthorized Use of a Motor Vehicle (47 O.S. 4—102) carrying up to 5 years in the penitentiary is a traffic offense, while Joy Riding (21 O.S. 1787 et seq.) carrying a fine of only \$5. to \$100., and Larceny of an Automobile (21 O.S. 1720), punishable by imprisonment in the penitentiary for 3—20 years, would NOT be traffic offenses.

Further applying this reasoning, Driving While Intoxicated, Driving While Under the Influence of Intoxicating Liquor, and Being in Actual Physical Control While Intoxicated (47 O.S. 902) would be traffic offenses, and the second conviction which would be a penitentiary offense, would also be a traffic offense, and thus juveniles could be sent to the penitentiary for a traffic offense without there being a certification proceeding. Inasmuch as first and second offenses are provided for in the same section and involve exactly the same elements except in the latter, an historical fact of a first conviction, it is hard to understand how a distinction can be made concerning first and second offenses with respect to whether they are traffic or non-traffic offenses.

If the same reasoning is applied, Transporting an Open Container of Alcoholic Beverage (37 O.S. 537 (a) (7), and Transporting Non-Intoxicating Beverages (21 O.S. 1220) would be crimes and not traffic offenses, and not being felonies, would be limited to Juvenile Court procedures without provisions for imposition of a fine.

The Court of Criminal Appeals had an opportunity in *Mark Steven Fairbairn vs. Municipal Court of Record*, 46 OBAJ 2000, to address this issue. In that case the Petitioner Juvenile was charged in the Municipal Court of Oklahoma City with Driving While Under the Influence of Intoxicants. The Juvenile sought to prohibit the Municipal Court from hearing the matter and sought to require the Municipal Court to transfer the case to the Juvenile Division of the Oklahoma County District Court. The Court of Criminal Appeals held that there were two (2) approaches which could be employed. The first solution: '...being the municipal authorities may file a proper petition in the Oklahoma County Juvenile Court requesting that this Petitioner be certified to stand trial as an adult.' The difficulty with that approach is, of course, that Section 1112 limits certification as an adult, waiver and transfer to acts and omissions which constitute felonies, and D.U.I, First Offense, is not a felony. If it were, its prohibition by city ordinance would be illegal because of the limiting provisions of 11 O.S. 672 (b) & (c).

Additionally, the Court held '...a second solution to the question stated is that the Petitioner may be prosecuted in the Municipal Court for a traffic ordinance violation, but he may only be subjected to a fine

and may not be incarcerated in any city or county jail for such violation.' The difficulty with this approach is that the limitations imposed providing punishment by fine only, is a limitation provided for in 10 O.S. 1112(d), which is applicable only in instances of prosecution for violation of city ordinance if the offense does not constitute a crime under State Law. D.U.I., of course, is a violation of State law (47 O.S. 902), and therefore, 10 O.S. 1112(d) has no implication. The Court withdrew its opinion on October 24, 1974, and then thereafter on January 22, 1976, entered an order saying that '...because of the unusual facts and circumstances concerned in the matter the Writ of Prohibition should not issue.' The Court did not address what constitutes a traffic offense and we can only infer that because the application for prohibition was denied, that the Oklahoma Municipal Court had jurisdiction and in order for them to have had jurisdiction, D.U.I would have had to have been treated as a traffic offense.

QUESTION 6. *May jurisdictional proceedings be stopped by parental consent to adoption?*

Two cases have been decided dealing with the relationship between consents to adopt and the jurisdiction of the courts after adjudication of Dependent and Neglected. In *West et ux. vs. DISRS*, 46 OBAJ 1037, the child was adjudicated Dependent and Neglected and thereafter on the morning of September 11, the Referee found that the parental rights should be terminated and permanent custody should be given to DISRS for consent to adoption. That afternoon, the mother, who had participated in the morning's proceedings, appeared before another judge and executed a consent to adopt to strangers. On the following day the strangers filed a petition to adopt and a motion to dismiss the juvenile proceedings. The Court held that neither the consent to adopt nor the filing of petition for adoption divests the Juvenile Court of its jurisdiction.

In *DISRS vs. Griffis*, 545 P2d 763(1975), 46 OBAJ 2460, an adjudicated Dependent and Neglected child was committed to DISRS and the DISRS was authorized to consent to the juvenile's adoption. Thereinafter, the child's foster parents filed a petition seeking to adopt the child. DISRS refused to consent to the adoption by the foster parents and the Court held that the refusal to consent by DISRS did not impair the jurisdiction of the District Court to fully hear and determine the petition for adoption.

QUESTION 7. How can parental rights be terminated?

Section 1103(b) provides that if at the time of filing the original petition '...a termination of parental rights is desired, it MUST be stated in the petition and summons...' (emphasis added)

Section 1109(b) provides for court-appointed counsel in Dependency and Neglect cases if termination of parental rights is a possible remedy.

No Court decision has been found dealing with the failure of the initial petition and summons to inform the parents that an adjudication of Dependency and Neglect could be a condition precedent to the termination of parental rights, and the post-adjudication prayer for termination of parental rights being raised more than six (6) months after the adjudication of Dependency and Neglect has been found in Appellate decisions without comment.

By supplemental petition in *In the Matter of the Termination of Parental Rights of Betty Jo Cotter vs. Hunter*, 46 OBAJ 1722(1975); *Meekins vs. DISRS*, 47-OBAJ 1331 (June 1, 1976), and by amended petition, *Caregnan vs. State*, 469 P2d 656 (1970).

It could be argued that where parents are not put on notice of the possibility of the Dependency and Neglect proceeding ripening into a termination of parental rights at the time of the filing of the initial petition, that any adjudication of Dependency and Neglect resulting therefrom which could involve no right to court-appointed attorney, the waiver of counsel, waiver of jury trial, or even in instances when the petition for adjudication of Dependency and Neglect is confessed by the parents, could not be utilized as the basis for termination of parental rights.

The Court held *In the Matter of Rodriguez, a Minor vs. State*, 270 OBAJ 1409(1976), the state was required to pay publication costs in termination cases in instances of indigency and that no alternative notice (posting in five (5) conspicuous public places) was satisfactory.

In the Matter of Theresa Bernette Wright and Lisa Marie Wright, Dependent Children Under the Age of 18 Years, 524 P2d 790(1974), the court held that there must be an affirmative finding by the court that the conditions resulting in the adjudication of Dependency and Neglect had not been corrected or abated, rather than the burden being on the parent to show that the condition has been corrected or abated as the basis for termination of parental rights.

In the Matter of the Termination of Parental Rights of Betty Jo Cotter vs. Hunter, the court held that the conviction of the stepfather of Manslaughter of a stepchild and the subsequent divorce of the parent from the stepparent, did not operate to bar a termination of parental

rights proceeding against the mother as to the siblings of the deceased child on a res judicata theory.

This case also affirmed the right of the Judge to ask questions of the witness in an effort to elicit the truth.

The Court held in *Caregnan vs. State*, 469 P2d 656, that the parental rights of a parent in prison could be terminated and that such termination did not constitute cruel and unusual punishment. This case also held that parental rights to a child must yield where the welfare of the child demands.

Section 1130, which provides for the termination of parental rights, conditions the action upon the 'parent who is entitled to custody.' This provision was adjudicated in *In the Matter of Natalie Ann Boyer, Melinda June Boyer, Dependent Children Under the Age of 18 Years*, 490 P2d 1076(1971) where a divorced father whose children were in the custody of his former wife contended he was not entitled to custody in contemplation of Section 1130 and therefore his parental rights could not be terminated. The Court said '...the entitlement there spoken of refers, in a general way, to the initial and inherent right which, by nature, as well as historically and legally, a natural parent has always had to the custody of his or her children. In this connection, see *Bishop vs. Benear*, 132 Okl. 116, 270 P. 569, 1st syl. One 'who is entitled' to such custody, as the parent there described, means a parent who has not forfeited that right or lost it by a court order terminating it, under one of the Law's provisions preceding Section 1130, or any other law providing for the permanent dissolution of such right.'

The Court contrasted the rigid requirements of involuntary termination of parental rights with the proceedings where a parent voluntarily and intelligently relinquishes and seeks the termination of parental rights in *In Re Baby Boy Fontaine*, where the Court held: '...a distinction is to be made between cases in which parents' parental rights may be taken from them by adversary proceedings and those cases in which termination of such rights is requested by the parents themselves, and sections of the Code relating to adversary proceedings do not apply to proceedings instituted by the mother of an illegitimate baby, for surrender of the baby to an agency for adoption.' (516 P2d 1333, 1972).

In *Meekins vs. DISRS*, 47 OBAJ 1331(1976), the Court held that the prohibition against modification of orders terminating parental rights and committing an adjudicated delinquent to DISRS did not prevent the vacation of such an order and proceeded to distinguish between modification and vacation.

In a specially concurring opinion, Justice Brightmire indicated a willingness to meet the constitutional objective headon. In addition to the

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potential for depriving a parent of due process and the encroachment on the inherent judicial power of the Court which Judge Brightmire raised, the constitutional equal protection of the laws objection emerges when the section is applied to a delinquent child context. An example is where two young men of same age and background are adjudicated delinquent arising out of the same transaction and a community-based treatment program or private institution (less restrictive alternatives) is available to one and not the other, and the latter is committed to DISRS. The Court can continue to exercise jurisdiction including periodic reviews to assure the right to treatment is being enforced and to dismiss the case as to the former but is without any jurisdiction as to the latter.

QUESTION 8. *Does Oklahoma statute require mandatory bifurcated proceedings in juvenile hearings?*

The law requires mandatory bifurcated proceedings in juvenile hearings. 10 O.S. 1111, 10 O.S. 1115, *In the Matter of B. J. and V. G., Children under 18 Years of Age*, 546 P2d 1354; B. F., a Juvenile vs. State, 47 OBAJ 1376 (June 4, 1976).

The adjudicatory trial is conducted according to the rules of evidence and hearsay may not be admitted. *Sorrels vs. Steele*, 44 OBAJ 749. The parties may demand a trial by jury at the adjudicatory stage and the Winship standard of beyond a reasonable doubt burden of proof obtains in delinquency proceedings. The issue is whether or not the alleged acts or omissions were committed by the juvenile respondent or if the alleged circumstances rendering the juvenile to be a deprived child exist. This constitutes a determination of whether or not the child is within the purview of the Juvenile Code and if so, the child is adjudicated and made a ward of the court.

At least in delinquency proceedings, the adjudicatory order is not an appealable order. Thereafter the court after receiving reports, test results and any other needed information as well as the proof offered by the parties, conducts a dispositional hearing in usually a less formal and less adversary environment than the adjudicatory trial, to determine in whose custody and under what conditions the child should be placed to effect the best interest of the child and protection of the community. *In Re Vilas*, 475 P2d 615(1970) states the dependency and neglect custody test thusly: '...in awarding custody of a dependent or neglected child the court or judge is to be guided by what appears to be for the best interests of the child in respect to its temporal and its mental and moral welfare.'

This case also defined neglected as 'the disregard of duty, owing to

indifference or wilfulness.' The Court recognized the necessity of bifurcated proceedings and in language which is cause for concern, applied the best interest test above to both the adjudicatory trial as well as the dispositional hearing phase.

QUESTION 9. *Does Oklahoma provide statutory privilege to trial by jury in juvenile proceedings?*

The U.S. Supreme Court determined in *McKeiver vs. Pennsylvania* 91 S. Ct. 1976(1971) that the U.S. Constitution did not guarantee the right of a trial by jury to juveniles. Justice Brennan concurred in the *McKeiver* case because the proceeding was conducted by public trial and dissented in the companion *Burrus vs. North Carolina* case because the case was heard in a closed courtroom excluding 'the public.'

Section 1110 provides for a six (6) -member jury in hearings to determine whether or not a child is within the purview of the Act.

In *Alford vs. Carter*, 504 P2d 436 (1972), the Court of Criminal Appeals held that there was no right to a trial by jury at the dispositional hearing and held that the provision in Section 1110 providing Statutory privilege to trial by jury in juvenile proceedings applied to adjudicatory hearings only.

This is in accord with *Haskins vs. Carter and Foster*, 506 P2d 1391(1973) which held that juveniles subject to interstate compact proceedings were not entitled to trial by jury.

In *Miller vs. Carter*, an unpublished case decided May 10, 1972, the Court of Criminal Appeals denied the request for trial by jury in certification proceedings.

QUESTION 10. *Does Oklahoma statute provide for appeals on juvenile hearings?*

10 O.S. 1123 provides for appeals. Appeals are lodged in the Supreme Court as other appeals except in adjudication of delinquency and certification as an adult. This is consistent with the holding prior to the effective date of the rules in *State vs. Valentine*, 536 P2d 1291(1975).

In *B. J. and V. G., Children Under 18 Years of Age*, 47 OBAJ 618,(March 4, 1976), the Court of Criminal Appeals held that an adjudicatory hearing order was not an appealable order and the appeal must be from the order entered at the dispositional hearing. This same result obtained in *B. F., A Juvenile vs. State*, 47 OBAJ 1376 (June 4,

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1976), where the juvenile attempted to appeal from the adjudicatory order prior to the dispositional hearing.

In *T. L. B., Juvenile vs. Jennings, District Judge*, 47 OBAJ 901 (April 14, 1976), the Court of Criminal Appeals held that the failure to object and preserve records at the adjudicatory trial precluded these issues from being raised on appeal at the post-dispositional hearing appeal.

QUESTION 11. *Does a juvenile have the right to bail in Oklahoma?*

10 O.S. 1112 provides that prior to the entry of an order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances.

The right to bail in a certification proceeding was affirmed in *Brown vs. State*, 47 OBAJ 1224, (May 13, 1976).

That there is no appeal bond in a juvenile delinquency proceeding was enunciated in *Eugene Ray Cravatt, a Child Under 18 Years of Age, to-wit: 16 Years*, 46 OBAJ 1843.

QUESTION 12. *Does the interstate compact apply to all juveniles in Oklahoma?*

In *Pfotenhauer vs. Hunter*, 536 P2d 923 (1975), the Court held that the interstate compact on juveniles could not be employed to secure the return of a 4-year old ward of the Probate Court of Nevada who was moved to Oklahoma by her maternal grandmother guardian whose letters of guardianship over the ward had been revoked. The Court found that the orphan had not run away from home, nor was she an adjudicated dependent or neglected child, nor an absconder, escapee, or juvenile delinquent, and that she was therefore not subject to the compact.

In *Haskins vs. Carter et al.*, 506 P2d 1391 (1973), the facts evolve around a female whose marriage had been annulled and who had run away from her parents' home in California to Oklahoma with the man whose marriage to her had been annulled. The Court held that the absence of the juvenile respondent from custody did not render moot the proceeding under the interstate compact.

QUESTION 13. *What must occur before a juvenile witness may be sent to jail for contempt of court?*

In *Ronnie Baker vs. State of Oklahoma*, No. A-18, 164 (May 14,

1973), the Court was confronted with a juvenile who during the course of a preliminary examination refused to testify as a witness after an attempt by the magistrate to grant immunity.

The Trial Court summarily found the juvenile witness guilty of direct contempt and ordered him to jail for 60 days.

The Court of Criminal Appeals citing *Nuckols vs. Van Wagner*, 511 P2d 110(1973), requiring that a Judge of the District Court not sitting as a magistrate must grant the immunity. The Court went on to say that '...we further direct the trial court to study chapter 51 of the Oklahoma Statutes, the Oklahoma Juvenile Code, and determine the necessity of certification of appellant as an adult prior to his hearing and sentencing for the offense of direct contempt of court.'

In *Rosell vs. State*, 503 P2d 1293(1972), the Court held that contempt is a misdemeanor.

If direct contempt is a misdemeanor, and may not be proceeded against until the juvenile is first certified as an adult and the Statutes (10 O.S. 1112) preclude certification for a misdemeanor, how do you punish for direct contempt of court?

QUESTION 14. *May the records of a juvenile be used in subsequent prosecution of the person as an adult?*

In *Lauen vs. State*, 515 P2d 578(1973), the Court of Criminal Appeals held that the 'for any purpose whatever' provision of 10 O.S. 1127 precludes use of a juvenile record as aggravating statement at the time of a judgment and sentence in a subsequent prosecution as an adult, and *Raper vs. State*, 501 P2d 847(1972) declared the rule that inquiry of witness as to prior juvenile proceedings as a basis of impeachment is highly improper.

Curtis vs. State, 518 P2d 1288(1974) dealt with the problem of a person convicted for a crime while under 18 years of age prior to *Lamb vs. Brown* supra, who was called as a witness after *Lamb vs. Brown*. The Court held '...where, under law at time defendant was convicted for joyriding and second-degree burglary, a boy of his age could be tried as adult, it was not error to inquire, in his prosecution for obtaining money by false pretenses, as to such alleged prior convictions, on cross-examination to test his credibility.'

These decisions all antedate the U.S. Supreme Court case of *Davis vs. Alaska*, 94 S. Ct. 1105(1974) wherein the Court reconciled the respective interests served by cross-examination and confidentiality and limitations on use of juvenile procedures by saying: '...Defendant, who was prosecuted for grand larceny and burglary, was denied his constitutional right of confrontation of witnesses in state trial where he was

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precluded by protective order from cross-examining key prosecution witness to show that witness was on probation following an adjudication of juvenile delinquency, notwithstanding state statutory policy of protecting the anonymity of juvenile offenders; defendant had right to attempt to show that prosecution witness was biased because of his vulnerable status. U.S.C.A. Const. Amend. 6 Alaska Rules of Children's Procedure, rule 23 AS 47.10.080(g).' and '...Right of confrontation of witnesses is paramount to state policy of protecting the anonymity of a juvenile offender. U.S.C.A. Const. Amend. 6.'

QUESTION 15. *Are the provisions of Oklahoma statutes on 'child in need of supervision' free of unconstitutional defects?*

Oklahoma, like many other jurisdictions, has had occasion to examine its 'beyond the control' provisions to determine if they were unconstitutionally defective and void for vagueness.

In the *Matter of Napier*, 532 P2d 423 (1975), Justice Berry, writing for a unanimous court, found the Oklahoma Act to be constitutional.

QUESTION 16. *In regard to juveniles, what is the position of the Oklahoma Court of Criminal Appeals on constitutional double jeopardy protection?*

Breed vs. Jones, an opinion of the Supreme Court of the United States on May 17, 1975, held that constitutional double jeopardy protection obtained in juvenile matters and that the issue of certification must be determined in advance of the adjudicatory trial. 421 U.S. 519 (1975).

The Oklahoma Court of Criminal Appeals had reached a compatible position earlier in *Garrison vs. Jennings*, 529 P2d 536 (1974), in holding that double jeopardy protection obtained in juvenile proceedings and that when juvenile court makes finding that child comes within purview of Juvenile Code, jeopardy attaches.

QUESTION 17. *Does a juvenile have the right to counsel during interrogation?*

Section 1109 provides that no information gained by questioning should be admissible unless the questioning about any alleged offense occurs in the presence of the child's parents, guardian, attorney, or legal custodian of the child, and not until the child, his parents, guard-

ian or custodian are fully advised of their constitutional and legal rights, including the right to be represented by counsel at every stage of the proceeding, and the right to have court-appointed counsel paid from the court fund.

In construing this section, *J. T. P. a Juvenile, vs. State*, 47 OBAJ 38 (December 30, 1975), the Court of Criminal Appeals after holding that there was no rational basis for a rule which would permit an illegally obtained confession to be introduced into evidence at a certification hearing, when the same confession would be clearly excluded at a delinquency hearing or criminal trial, proceeded to emphasize that Section 1109 establishes an automatic and mandatory rule. A failure by the prosecution to show compliance with its requirements will render the admission or confession of the child inadmissible into evidence against him without the necessity of any further inquiry into circumstances. No custodial interrogation of a child may proceed until BOTH the child and his parent have been fully advised of their constitutional and legal rights, (emphasis added), nor any such interrogation be conducted outside the presence of the child's parent, guardian, or attorney. The Court also referred to a Colorado provision that the parent under such circumstances must be in a position to provide effective guidance and advice.

Crook vs. State, 47 OBAJ 421 (February 11, 1976), dealt with a juvenile certified as an adult and convicted of the crime of Rape in the Second Degree, perpetrated on an 8-month old female left briefly in his care. The evidence showed that the juvenile had made a confession while in the presence of his grandmother, with whom he lived. After both the juvenile and the grandmother had been fully advised of their Miranda rights and pursuant to Section 1109, the Court found that even though the grandmother was not the legal guardian, that she was for the purposes of Section 1109, the de facto custodian or guardian and that the provisions of the section were fully satisfied.

QUESTION 18. *What are some alternatives of disposition that fall within a legal basis effecting the best interest of the child?*

Section 1116 provides a great deal of latitude in providing the Court with the legal basis for dispositions designed to effect best interests of the child, as has been otherwise indicated. In *the Matter of Lisa Kay Valis, Dependent and Neglected Child*, 475 P2d 615, has held that '...in awarding custody of a dependent and neglected child the court or judge

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is to be guided by what appears to be in the best interests of the child in respect to its temporal and its mental and moral welfare.'

The Oklahoma Supreme Court held in the *Matter of Frey vs. DISRS et al.*, 47 OBAJ 447 (1976), that if the application of the best interest test indicated the removal of the children from the continental United States, that such custody order could lawfully be entered.

QUESTION 19. *What is a preliminary hearing?*

T. L. B. vs. Jennings, 47 OBAJ 901 (April 14, 1976), which has been cited earlier as holding that adjudicatory trial errors must be preserved at the time of the trial, also raised the assertion that the juvenile had a constitutional and statutory right to a preliminary examination prior to the adjudicatory trial.

This question was not reached on appeal but the Court held in *Dorsey vs. State*, 503 P2d 1305 (1972) '...that the term 'preliminary hearing' refers to a preliminary proceeding or fact finding hearing on the part of the Juvenile Court, as opposed to the traditional definition usually accorded the term in criminal proceedings.'

T. L. B. vs. Jennings supra also raised the objection that no citation to the specific Statute either federal or state, of the municipal ordinance under which the juvenile is charged, was plead. This objection was not reached by the Court. It had also been hinted at in *Sorrels vs. Steele*, 506 P2d 942, but is now moot because of the amendment to Section 1103 brought about by the passage of Senate Bill 472 by the 2nd Session of the 35th Legislature, which requires the petition to set forth the specific federal law, state law or municipal ordinance under which the child is charged and an endorsement of witnesses intended to be called by the petitioner, where the child is sought to be adjudged a delinquent child under the Act.

This amendment also requires that if any of the facts required to be alleged are unknown, the petition must state why the facts are not known to the petitioner.

QUESTION 20. *What is meant by 'probable cause?'*

One of the emerging requirements is the necessity of a hearing before a juvenile officer prior to the continuation of a pre-trial detention. Regardless of whether such a hearing is denominated a detention hearing, shelter hearing, pre-adjudicatory dispositional hearing or initial appearance, there must be a showing of the necessity for the detention

and custody and the respondent juvenile and respondent parents must be given an opportunity to be heard.

Moss vs. Weaver, 525 F2d 1258 (January 19, 1976), promulgated the rule that "...a finding of probable cause — i.e., of 'facts and circumstances' sufficient to warrant a prudent man in believing that the (suspect) had committed or was committing an offense."

The Fifth Circuit Court went on to hold that pre-trial detention of juveniles without determination of probable cause violates the 4th Amendment.

In *Cooley vs. Stone* 414 F2d 1212 (1969), the District of Columbia Circuit held that the 16-day confinement of juveniles without probable cause hearing was in violation of the constitution.

The Court adopted the District's rule that 'no person can be lawfully held in penal custody by the State without a prompt judicial determination of probable cause.'

In *York et ux. vs. Halley et al.*, 46 OBAJ 698 (1975), the Supreme Court of Oklahoma said '...The decision of an intake worker that children should summarily be forcibly removed from their homes and placed in another's custody without a hearing for two months is not compatible without ideas of due process, or equal protection under the laws. This methodology is subject to patent abuse.'

In *J. T. P. vs. State* supra, the Court of Criminal Appeals found that the failure to report the detention of the juvenile to a judge on a weekend and then not taking the young man before a judge of the District Court on the following Monday morning was 'the most blatant violation of Section 1107 and constitutes a second reason why the statement obtained must be denied into evidence.'

QUESTION 21. *Does a juvenile's parents or counsel have the right to the examination of reports?*

Section 1115 provides for the courts receiving oral or written reports at the dispositional hearing which would not be admissible at the adjudicatory trial. The Statute also requires that the parties be informed as to the contents of the reports and given the opportunity to controvert them.

The Court construed this section in *Sorrels vs. Steele*, 506 P2d 942 supra. The Court said '...The record reflects the court not only refused to advise the parents of the contents of the report, he refused to allow the parents to see it and told counsel for appellant they were not entitled to view it.' and '...Once again, the record makes it abundantly clear the

court, for no cause shown, good or otherwise, denied the parents of appellant a right clearly set up in the Statutes."

The dispositional hearing apparently by agreement of the parties was held instantly following the adjudicatory trial and while the Court did not criticize the practice specifically, the tenor of the opinion is such as to suggest that even if the information needed for disposition is available as were the reports herein, that the bifurcated process must not be sacrificed or compromised.

QUESTION 22. Are notice provisions mandatory in Oklahoma?

Notice provisions are mandatory, *Irene Faye Lone Wolf, Plaintiff in Error vs. State of Oklahoma and the DISRS of the State of Oklahoma, Defendant in Error*, 470 P2d 1014 (1970) may not be substituted, *In the Matter of Rodriguez, a Minor, et ux, vs. State*, 47 OBAJ 1409; and applies to custodians as well as parents and guardians. *Crandell vs. State*, 539 P2d 398 (1975), and *Brown vs. State*, 47 OBAJ 1224 (1976).

QUESTION 23. May uncorroborated testimony of an accomplice be admitted during the adjudicatory hearing?

Craig Allen Smith vs. State, 525 P2d 1252 (1974), holds that a juvenile cannot be adjudicated a delinquent child upon the uncorroborated testimony of an accomplice. The 1976 case of *B. F., a Juvenile*, 47 (BA) 1376, is in accord.)

In the Matter of Joan Richmond, 484 P2d 880 (1971) is a case in which the Supreme Court of Oklahoma held that after an adjudication of dependency and neglect upon the petition of the mother but prior to the termination of parental rights pursuant to the adjudication, the Court had the jurisdiction to allow the petitioning parent to revoke her relinquishment and petition.

In two recent cases the Court has avoided review of orders of adjudication because of appellate procedures but called the trial court's attention to its authority to dismiss the cases at the dispositional hearing. See *In the Matter of B. J. and V. G., Children Under the Age of 18 Years*, 47 OBAJ 618 (March 4, 1976) and *B. F., a Juvenile vs. State*, 47 OBAJ 1376 (June 4, 1976).

ADDENDUM

The following constitutes a survey of decisions of the Oklahoma Appellate Courts interpreting the Juvenile Code sans Certification, Waiver and Transfer, during the period 22 June 1976 through 20 November 1976.

Age and Sex Considerations

Lower Court's attention again called to 10 O. S. 1102, providing '...When jurisdiction shall have been obtained over any child, it may be retained until the child becomes twenty-one (21) years of age...' S. H., a *Juvenile vs. State*, 47 OBAJ 2433.

Delinquency Adjudications

Plea of guilty not to be received if juvenile asserts innocence. *Robinson, a Juvenile vs. Boley State School for Boys*, 47 OBAJ 1903.

Juvenile to receive *King vs. State* (47 OBAJ 1115) admonitions before entering plea of guilty or stipulating. *Robinson, supra*.

Attacks on validity of unappealed order to be prosecuted in court of commitment and NOT by habeas corpus proceedings in county where confined. *Robinson, supra*.

Confidentiality

Order restraining publication of juvenile's name and photograph in delinquency proceedings is not unconstitutional. *Oklahoma Publishing Company vs. District Court, Oklahoma County*, 47 OBAJ 2412.

Bifurcated Proceedings

Question of sufficiency of evidence of neglect not proper at dispositional hearing. *In the Matter of Paul, et. al.*, 47 OBAJ 2223.

Issue at dispositional hearing is best interest of child and community. *In the Matter of Paul, et. al.*, *supra*.

Disposition and Custody Alternatives

Issue at dispositional hearing is best interest of child and community. *In the Matter of Paul, et al.*, *supra*.

Examination of Reports

Statute authorizing use of reports at dispositional hearing is constitutional. *In the Matter of Paul, et al.*, *supra*.

Right to Counsel and Interrogation Rules

Juvenile must be given opportunity for private discussion with parents before executing waiver of rights. *Layton vs. State*, 47 OBAJ 1323.

Use of Juvenile Records

Those portions of the juvenile records involving pertinent facts of adjudication, disposition and the rehabilitative history surrounding the disposition, are proper to be included in pre-sentence reports, and as such, may be considered by the Court in sentencing. *Young vs. State*, 47 OBAJ 1475

Termination of Parental Rights

Neglect defined as disregard of duty, owing to indifference or wilfulness. *Russell vs. O'Neill*, 47 OBAJ 1707.

Proper care by other than parents does not defeat neglect adjudication. *Russell vs. O'Neill*, *supra*.

Failure of father to affirmatively come forward and meet child's needs constitutes basis for adjudication of neglect and dependency and termination of parental rights. *Russell vs. O'Neill*, *supra*.

Best interest test controls in determination of abandonment. *Russell vs. O'Neill*, *supra*.

DELINQUENCY AND THE UNHOLY ALLIANCE

By

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Judge Couch has received many awards for service and achievement.

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The legislature of the State of Oklahoma, stimulated by certain United States Supreme Court decisions, approved new legislation in the area of juvenile justice entitled 'Delinquent, Dependent and Neglected Children,' effective January 13, 1969.¹ The Act contemplates that 'District Courts would first try all other means consistent with the welfare of the individual child, to make appropriate disposition of older children adjudicated to be in need of supervision, or dependent or neglected.'²

While the well-intended legislation was commendable in guaranteeing the juvenile the principles of due process, it fell far short of stated goals by failing to provide the so-called 'other means' to assure that the courts had the tools with which to make appropriate, well-reasoned dispositions. The legislation also failed to provide the tools for diversion either before or after a juvenile petition was filed. Furthermore, the judge was left with the responsibility of making a decision as to which juvenile to divert and then was expected to hear those cases which he did not divert.

At about the same time, in 1969, a few counties in Oklahoma, on an experimental basis, developed community-based projects funded by several sources, including the Department of Institutions, Social and Rehabilitative Services, the Federal Government and the County Commissioners. These projects were promoted locally in large part by the judge having juvenile docket responsibility and a nucleus of dedicated and progressive-minded citizens concerned about children in their community. Social workers were hired to screen juveniles referred from whatever source and either determined or assisted in determining whether a juvenile petition should be filed. In addition, these social workers not only provided intake but provided crisis intervention, counseling, and after care to the child and family. However, the development and promotion of alternative diversionary community resources consumed much of their time and effort. The legal authorization for this delegation of authority by the court to a social worker is perhaps best expressed in 10 Oklahoma Statutes 1103 (a) which allow anyone to file a petition.³ In some of the experimental counties, a contractual relationship was developed between the judge assigned juvenile cases and the Department of Institutions, Social and Rehabilitative Services authorizing social workers to perform intake and diversion.

Regardless of the kind of relationship or program ultimately established in those counties in the late 1960's and early 1970's, the success of the experiments seemed to encourage and promote the establishment of the present unholy alliance which was created by virtue of Senate Joint Resolution 13 in the State of Oklahoma in 1975.

QUESTION 1.

What is meant by the 'unholy alliances'?

The 'unholy alliance' mandated by the legislature required the Department of Institutions, Social and Rehabilitative Services, hereafter referred to as Department (the executive branch of government), to enter into a contract with the Oklahoma Supreme Court (the judicial branch of government), to provide intake, probation, and parole services for every county in the State of Oklahoma except those counties with duly constituted juvenile bureaus.⁴ The implementation of this provision should assure a degree of equality in services to juveniles throughout the State of Oklahoma. The legislation further required the maintenance of a Uniform Juvenile Statewide Court Reporting System,⁵ the establishment of standards and procedures as required by State and Federal law,⁶ the employment of staff sufficient to carry out the provisions of the act;⁷ and it granted the authority to the Department to contract with private nonprofit or public agencies.⁸ Thus, Senate Joint Resolution 13 became operative October 1, 1974, and the 'unholy alliance' was given life when an agreement was signed by the Honorable Ben T. Williams, Chief Justice of the Supreme Court of the State of Oklahoma, and L. E. Rader, Director of the Department of Institutions, Social and Rehabilitative Services.⁹

The legislature designated the Department as the State Planning and Coordinating Agency for statewide juvenile justice and delinquency prevention services,¹⁰ and it was authorized to enter into agreements for the establishment of community based prevention and diversionary youth services and programs.¹¹ All of these functions and services were combined and made the responsibility of the Department's newly created division of Court Related and Community Services (hereafter referred to as CRCS) headed by Dr. Ted Baumberger.

QUESTION 2.

What function was to be performed by the standing committee appointed by the Oklahoma Supreme Court?

A standing committee¹² was appointed by the Oklahoma Supreme Court to help establish guidelines and oversee the implementation of Senate Joint Resolution 13 throughout the State of Oklahoma. The guidelines to be established by the Supreme Court committee in conjunction with the District Attorneys' Association and the Department are to provide and maintain written, uniform standards, policies, practices and procedures relating to providing the services, supervisory services, and administration thereof with a provision for review periodically by the judiciary and the Department.

In order to understand the reasons for change in policy, legislation, and approach regarding our system of juvenile justice, a brief examination of its development and history, including attitudes expressed by the U.S. Supreme Court, is appropriate. The cases and the brief history which follow concerning juvenile justice in the United States provide the backdrop and set the stage for the consummation of the 'unholy alliance.'

I. History in Brief

QUESTION 3. *What was the prevailing attitude concerning rehabilitation of a child in 1899?*

Anyone with an interest in juvenile law must understand that the development of the present structure in the juvenile justice system emerged from a compendium of social and legal philosophies. The first juvenile court act was developed in Illinois in 1899,¹³ by reform-minded persons interested in protecting children from the disadvantages of criminal stigma.¹⁴ The prevailing attitude then was that jails or prisons in the adult criminal framework offered no opportunity for the rehabilitation of a child. The juvenile-court approach thus became one of help as well as punishment. No longer was the deviant child subjected to the formal, punishment-oriented adult criminal court and correctional systems.

QUESTION 4. *How could the high goals of reform minded persons degenerate into a 'horror show of inequities' where children were involved in the legal process?*

Leaders of the so-called reformation placed much faith in the application of medical and behavioral scientific theories to correct the juvenile problem.¹⁵ No attention, however, was given the long range and difficult task of changing the child's social and economic environment.

As the juvenile court turned its attention to the needs of the child whether neglected or charged with a crime, it relaxed constitutional guarantees¹⁶ and under the doctrine of *parens patriae*,¹⁷ first recognized in the case of *Ex parte Crouse*, in 1839,¹⁸ perceived itself as an omniscient father protecting a wayward child from the wrongdoing of others. The operation of the juvenile court was very informal, in that strict rules of criminal evidence did not apply and the child was not treated as a criminal but as a person in whose guidance and welfare the state was peculiarly interested.¹⁹ The power of *parens patriae*, exercised by the states, acting in the best interest of their children, provided the basis for a civil proceeding

in which criminal constitutional safeguards would be applicable.²⁰ Thus, delinquent acts were to be distinguished from criminal acts and the whole question of procedural due process was not considered applicable to the juvenile courts. Obviously, abuses to the child were many in the court process as well as in confinement, and the 'novel' system degenerated into horror show of inequities.²¹

The first judicial test in the plethora of juvenile court legislation that transpired in the early twentieth century occurred in Pennsylvania in about 1905.²² In the case of *Commonwealth v. Fisher*, the Supreme Court of Pennsylvania emphasized that Juvenile Court proceedings were not criminal in nature but civil and, therefore, the constitutional due process requirements did not apply to the Juvenile Court Act. The court, in effect, took away the constitutional rights that a child had prior to 1899, and not until some sixty five years later did the United States Supreme Court reinstate those rights.

The juvenile courts of the early 1900's were recognized by five characteristics: (1) informal; (2) remedial; (3) preventative; (4) administrative; and (5) individual oriented. The role assumed by the court became that of a loving, all knowing, and wise parent, a court that was not bothered by the lack of procedural due process. Decision by decision, the doctrine of *parens patriae* was used to justify the denial of due process.²³

Further, as the juvenile court moved into the twentieth century, the demand for social service personnel expanded and began to influence the attitude of many courts in determining the best interest of the child. Some courts, however, misunderstood the role of the social scientist, and felt that his inclusion in the system would lessen the role of the judiciary and become a threat to their 'father image' and to the empires the courts had been developing. In addition, the juvenile court habitually performed its function within the inquisitional, rather than the adversarial, model, being governed by civil instead of criminal concepts; and the changes wrought by the U.S. Supreme Court in 1966 were a rude awakening to many who were required to rethink their responsibility and adjust their tolerance.

Criticism of the *parens patriae* philosophy began in the late 1940's in the case of *Haley v. Ohio*,²⁴ where the heretofore unfamiliar phrase 'due process of law' was mentioned. Reference to Constitutional safeguards, fairness, and justice began to appear frequently in cases decided in the 1950's and 1960's.²⁵

The U.S. Supreme Court, in the case of *Mapp v. Ohio*,²⁶ required the states to recognize the applicability of the first eight amendments of the U.S. Constitution, to criminal procedure. The court ruled that the Fourth Amendment's protection against unreasonable searches and seizures, as well as the exclusionary evidence rule enforcing that protection, applied in state criminal proceedings as a part of due process of law guaranteed by the

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Fourteenth Amendment.²⁷ The ruling in the Mapp case was soon to be tested regarding its application to juvenile law beginning with the Kent case in 1966.²⁸

QUESTION 5.

What are the major findings in the following three cases:

(1) Morris Kent, (2) Gerald Gault, and (3) Samuel Winship?

Morris Kent, 16 years old, who lived in Washington, D.C., unlawfully entered an apartment; and while stealing a woman's wallet, he was discovered, and thereafter raped his victim.²⁹ Captured and detained by the police for several weeks, Morris Kent was convicted of the charge of housebreaking, but the U.S. Supreme Court reversed the conviction because of an improper waiver (certification in Oklahoma, transfer or waiver elsewhere) proceeding. The *Kent* case, the first juvenile court case decided by the U.S. Supreme Court, emphasized the importance of due process. The Supreme Court indicated the trial judge erred in failing to hold a waiver or certification hearing, to make findings, to give reasons for his decisions and for considering court studies and evaluations without making them available to young Morris' lawyer. The next due process case decided by the U.S. Supreme Court followed quickly on the heels of the Kent decision.

Gerald Gault, 15 years old, lived in Arizona and made an obscene phone call to a neighbor lady.³⁰ Gerald was convicted, but the U.S. Supreme Court reversed the conviction, for many essentials to due process were missing in this case. The court emphasized that due process requires adequate, timely, written notice of the charges against the minor. Gerald was held in detention eight hours without notice to his parents. The adjudication hearing was held the next day by virtue of a juvenile petition which recited no factual information or allegations as to the criminal behavior causing Gerald to be brought within the jurisdiction of the court. Furthermore, no transcript of proceedings was recorded at the adjudication hearing. He was adjudicated a delinquent and institutionalized. Under the indefinite sentencing provisions of the Arizona statute, he could have been held for six years, whereas an adult would have received for the same offense a \$50. fine or two months in jail. The Supreme Court by its ruling established emphatically that the minor has the right to (1) notice of the charges; (2) an attorney; (3) confrontation and cross examination of witnesses; and (4) the exercise of the privilege against self-incrimination, all of which are fundamental to the adjudicative stage of the juvenile proceeding. The court also stated, 'Due process of law is the primary and indispensable foundation of individual freedom.'³¹

Both Kent and Gault opinions express the view that the juvenile system had fallen short in providing the rehabilitative treatment contemplated by the reform-minded individuals of the early 1900's. The juvenile is not entitled to procedural regularities mandated by the U.S. Supreme Court, and it is hoped that the courts will remain concerned about the needs of the child. The observation of due process in no way required abandonment of any rehabilitative alternative the court may have available; it merely assures that some constitutional guarantees available to the adult belong to the juvenile as well.

A twelve year old boy named Samuel Winship³² stole \$112. from a woman's pocketbook. The act if committed by an adult would constitute larceny. After evidence was taken, the minor was found to be delinquent and placed in a training school subject to confinement for as long as six years. The hearing judge made the specific finding that his decision was based on a preponderance of the evidence and rejected the contention that due process required proof beyond a reasonable doubt. The U.S. Supreme Court did not, however, agree with the trial court.

The U.S. Supreme Court in the Winship case decided that due process protected an accused in a criminal prosecution against conviction except upon proof beyond a reasonable doubt. Although the 14th Amendment did not require that a juvenile delinquency hearing conform with all the requirements of a criminal trial, nevertheless, the due process clause required application during the juvenile hearing of the essentials of due process. Thus, juveniles, like adults charged with a crime, were constitutionally entitled to require proof beyond a reasonable doubt during the adjudicatory stage.

The court reasoned that this higher standard of proof (reasonable doubt) would have no impact on the beneficial aspects of the system such as the flexibility of the pre-judicial and post-adjudicative stages. This higher standard of proof does not affect the confidentiality, informality, flexibility, or speed of the juvenile process; it only requires use of the accepted standard for a criminal act.

The holding in the case of *Ivan V. v. City of New York*,³³ establishes the retroactivity of the rule announced in Winship requiring proof beyond a reasonable doubt. The Ivan case is also important because it reaffirmed the requirements of due process and fair treatment in juvenile proceedings.

QUESTION 6. *Do juveniles have a right under the U.S. Constitution to a trial by jury?*

The Supreme Court of the United States had been given several opportunities to rule directly on the right of the juvenile to a trial by jury,³⁴ but seemed on each occasion unwilling to meet the issue head on.

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Language used in some of the cases indicated that the juvenile would eventually be extended the right to a jury trial the same as his adult counterpart; for instance, Mr. Justice Black, dissenting in the Debacker case,³⁵ stated, 'I can see no basis whatsoever in the language of the Constitution for allowing persons like the appellant the benefit of these rights and yet denying them a jury trial, a right which is surely one of the fundamental aspects of criminal justice in the English speaking world.' All indications were that very soon, when the right case came along, the Court would extend to the juvenile the Sixth Amendment's right of trial by jury.

It was in this warm and relaxing climate of predictability that the bubble of complete extension of constitutional rights to the juvenile was burst by the U.S. Supreme Court in *McKiever v. Pennsylvania*.³⁶ The Court ruled that the right of jury trial was not necessary to the juvenile proceeding by stating 'We must recognize, as the court has recognized before, that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. . . . Despite. . . all these shortcomings, we conclude that trial by jury in the juvenile court's adjudicative stage is not a constitutional requirement.'³⁷

Therefore, today's juvenile delinquent is suspended in a state of constitutional uncertainty somewhere between the old rationale of *parens patriae* and the recognition of the juvenile's entitlement to full constitutional due process. No one can quarrel with the laudable clinical approach taken in juvenile matters and recognized in *McKiever*, but to use that approach seemingly as a rationalization to deny due process is arbitrary and illogical.

The impact that each one of these cases had on the juvenile justice system is evident. The decisions in these cases paved the way for meaningful changes in legislation, policy making, and attitudes concerning the juvenile process. Children were once again afforded the rights to which they as persons were entitled but had been denied since the late 1800's.

QUESTION 7. *What are two desirable results achieved through the 1969 reorganization of the juvenile justice system?*

As a result of the rulings in the previous cases, in 1969 Oklahoma reformed its approach and fell in line to guarantee due process to children. In order that we have a full perspective of the juvenile justice system in Oklahoma, we will examine not only the law but some of the guidelines and procedures of the CRCS Division of the Department approved by the Oklahoma Supreme Court and the Department. The child charged is not only allowed due process but is given intake or screening services performed by the CRCS Division of the Department uniformly throughout the entire State as a result of the 'unholy alliance' between the courts and D.I.S.R.S.

II. Intake

The term 'intake service' means the receipt, evaluation, and investigation or screening of every complaint concerning a referred juvenile³⁸ who is alleged to be delinquent,³⁹ in need of supervision,⁴⁰ or dependent and neglected.⁴¹

The definition of intake service also requires a preliminary determination concerning the detention of the minor⁴² in an appropriate facility or the release of that juvenile to the parents pending adjudication. Intake 'service' further requires the CRCS worker to determine whether the allegations of the referral source are accurate. If the allegations are substantiated, a decision must be made as to whether an informal adjustment⁴³ is practicable or whether the case needs to be referred to the district attorney. If so, the intake worker is to assist in the prosecution of that case if a petition is filed.

QUESTION 8. *Can a judge participate in preliminary hearings about a case then take his place on the bench to hear the case?*

The benefits to be derived from assigning intake workers to each county are obvious. A judge should not be involved in such a decision-making process as the filing of a juvenile petition and then be expected to alight on the bench, impartiality intact for the adjudication process. A judge does not have that authority, power, or responsibility in any other kind of judicial proceeding whether criminal, domestic, probate, or civil. Why should he be required to insinuate himself into the prosecutorial function in a juvenile matter? Intake is not a proper function of the court as it is of the executive branch of government. The assignment by the Department to the various counties of personnel trained for the function of intake is intended to provide uniformity of service throughout the State of Oklahoma. However, there still exists the provision, reinforced by a recent Oklahoma case, which smacks of intake whereby a judge may upon proper application by a person make a preliminary inquiry to determine whether the interest of the public or of the child requires that further action be taken and that an informal adjustment be made or that a petition be filed.⁴⁴ The provision of this statute should apply to a situation where the intake worker and the district attorney have elected not to file a juvenile petition in a specific case, thus keeping the courthouse doors open on proper application by an aggrieved citizen. This procedure certainly would conform with Title 10 Oklahoma Statutes Section 1109(c) which states that upon the request of the Court the district attorney shall prepare and prosecute any case

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or proceeding within the purview of this act. The judge hearing the evidence concerning whether a petition is to be filed should not then hear the adjudicatory phase of the proceeding.

QUESTION 9. *Describe the intake process in Oklahoma.*

The process of intake is not a novel one. Informally, intake has been done for years by police officers (the station house adjustment) when they decide what is to be done with a misbehaving juvenile coming to their attention.⁴⁵ Many social, welfare, and public health agencies have also been involved in the intake processes both before and after referral to enforcement authorities. The intake process is not without legal foundation, and many jurisdictions have long considered intake as a necessary and beneficial tool in the system of juvenile justice.⁴⁶

The guidelines for intake in Oklahoma require the CRCS Division of the Department, performing the function of intake, to consult with the district attorney concerning decisions involving legal merit and to assist him with statistical, legal, and social data necessary in the event a petition is filed. It is understood that the final word with regard to the filing of a juvenile petition rests with the district attorney.

Prior to any interview, the requirements of due process are to be met by the CRCS intake counselor, who must explain fully and clearly to the juvenile and the parents (guardian or legal custodian) their constitutional and legal rights concerning statements.⁴⁷ In one New York case, the court ruled that the juvenile was not entitled to exercise the right to court appointed counsel (the presence of privately retained counsel is not precluded) at the informal intake conference held prior to judicial proceedings, but the Oklahoma courts have not as yet been called upon to rule in that area. If an attorney is requested at intake, the sound practice is to stop the interview until an attorney is present.

The intake counselor is also required to advise the juvenile and his parents of their right to a formal hearing concerning the allegations; and, even if in the opinion of the counselor the referral should be informally adjusted, the child and the parents are entitled to their day in court.⁴⁸ In the event an informal adjustment agreement cannot be reached, the matter must be referred to the district attorney. Adherence to these intake guidelines will assure, perhaps for the first time, that all children and their parents involved in the juvenile justice system in Oklahoma will be given the opportunity to exercise their rights regardless of who performs the intake function, be it a judge, prosecutor, or benevolent county juvenile officer.

It is necessary for an intake worker to make an initial determination as

to whether the court has jurisdiction. The guidelines prescribed for the intake worker are in accordance with the laws of the State of Oklahoma. A child is defined as any person under the age of eighteen years,⁴⁹ and jurisdiction is proper if the act complained of has been committed prior to the person's eighteenth birthday. The intake counselor must determine whether the alleged conduct or status of the minor comes within the purview of the juvenile code; if so, whether the minor is delinquent,⁵⁰ in need of supervision,⁵¹ dependent, neglected,⁵² or a deprived child,⁵³ since the District Court has jurisdiction over any of these categories of children found within the county.⁵⁴ Again, the 'unholy alliance' affords us the opportunity to assure that children in Creek County are subject to the same uniform application of juvenile law pertaining to jurisdiction as the children in Garfield County.

When the jurisdictional obstacle is overcome, the CRCS intake counselor's effectiveness or lack of it depends upon his ability to use the tool of 'diversion,' which emphasizes the adjustment of problem behavior outside the court setting. Many alternatives for diversion are suggested by, but not limited to, the referral policies prescribed by the intake guidelines and procedures of the Court Related and Community Service Division of the Department. When an offense alleged is one which normally requires the filing of a petition, such as burglary in the first degree, the matter is referred to the district attorney to further determine jurisdiction and the sufficiency of evidence. If the district attorney believes that no prosecutive merit exists, the juvenile is to be released. If there is merit to the allegations, an informal adjustment⁵⁵ may be in order as long as, first, the juvenile and the parents are advised as to their right to a formal hearing; second, the facts are undisputed; third, the informal adjustment period does not exceed thirty days; fourth, close supervision is not appropriate; and finally, the parents and juvenile are informed that the arrangement may be terminated and a formal hearing requested by any one involved. The diversionary aspect of intake is indispensable, perhaps most important for the opportunity it affords in eliminating the status offender from the stigmatizing court process.⁵⁶

The intake worker has several alternatives available if the minor is charged with a misdemeanor. If a misdemeanor charge has prosecutorial merit as determined by the district attorney, but if court action would be of questionable benefit, the intake worker may adjust by closing his file with no action, provided that the arrest has served as a deterrent or that the age of the juvenile is such that court action would be ineffective. If court action is determined to be appropriate and a petition is filed, the Court may

postpone further action for thirty days without supervision by CRCS personnel. A decision to file may be deferred if the parties consent to temporary supervision by a probation counselor to allow for the alleviation of the problem without requiring the full impact of the court process. The deferred decision to file with temporary supervision also provides for an evaluative period to determine whether behavior patterns will change. Prosecution may be deferred by agreement for supervision of a minor and is not to be considered an adjudication or disposition. It is merely an agreement for case-work supervision for no longer than eighteen months; and as long as the agreement is being complied with, no further proceedings should be commenced concerning the transaction out of which the agreement arose. If, however, court action is initiated prior to completion of the agreement, evidence gained while the agreement was in effect will not be used at subsequent court hearings relating to the original transaction. The guidelines developed concerning the responsibility of intake contemplate the individual needs of the particular minor charged and at the same time protect the interest of the community.

QUESTION 10. *What is meant by 'diversion,' and the criteria guiding selection of corrective alternatives?*

Intake, as we have mentioned, concerns one of the most important aspects in the system of juvenile justice, that of diversion. 'When considering diversion, the goals of decision-making must be met in all phases of the system. You must be fair and responsive to the young people served by the system. You must provide services sufficient to ameliorate those problems that we are able to diagnose in the processed youth. You must also afford the protection that society demands in dealing with youth who are 'acting out' in the community.'¹⁷ The object of diversion is to provide a program that will emphasize assistance for the juvenile and the family in adjusting problem behavior outside the court setting.¹⁸ The appropriate criteria depend upon answers to the following questions:

1. Will prosecution cause undue harm to the juvenile or compound the social problems leading to his delinquent acts;
2. Are the services to meet the offender's needs and problems unavailable within the juvenile justice system or may they be provided more effectively elsewhere;
3. Will the interest of the victim and society be better served by diversion than by official filing.¹⁹

Factors which may be considered favorable to diversion include the relative youth of the offender, willingness of the victim not to prosecute,

whether the offense may be the result of mental illness or psychological abnormality for which treatment is available, and the probability that the offense was significantly related to other conditions and situations, such as family problems.⁶⁰

Court intervention in some situations may not only be unhelpful but actually detrimental to the development of a troubled family's ability to cope with its problem.⁶¹ Thus, diversion is a worthwhile and vital concept in the juvenile justice system and has now the opportunity of being uniformly applied throughout the State of Oklahoma.

III. Detention

QUESTION 11. *What factors are considered in determining the use of detention of juveniles?*

The intake worker must consider the necessity of detention⁶² in many cases. Considerations suggested by Detention Guidelines include the violence surrounding the crime, the juvenile's history of serious offenses, and his failure to appear at previously-scheduled hearings.⁶³ If any one of the factors appears, the counselor should refer the matter to the district attorney, recommending detention in accordance with Oklahoma Statutes,⁶⁴ pending a hearing. The juvenile should be allowed a detention hearing, and a bond may be set by the court.⁶⁵

QUESTION 12. *Are juveniles entitled to bail?*

The constitutional right to bail for juveniles is a concept which has not been widely approved. In *Doe v. State*,⁶⁶ the Supreme Court of Alaska stated that the right to bail was undesirable from the child's standpoint because parents may be unwilling to take the child, or the child may be unwilling to return home. The automatic release might deprive a child of badly-needed care and services he could receive in a properly designed detention facility. The court added, 'Only if there is clearly no alternative available may the child be committed to a detention facility and deprived of his freedom.'⁶⁷ Fundamentally, detention should involve an individual judgment concerning the child detained as provided in the Uniform Juvenile Court Act: 'A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition (1) unless his detention is required to protect the person or property of others or of the child or (2) because the child may abscond or be removed from the jurisdiction of the court or (3) because he has no parent, guardian or custodian or other person able to provide supervision and care for him and return him

to the court when required, or (4) unless an order for his detention or shelter care has been made by the court pursuant to this act.⁶⁸ The United States Court of Appeals for the Ninth Circuit approved the appellant's release for the purpose of aiding in the preparation of his defense.⁶⁹ Several cases point to standards and grounds for detaining juveniles,⁷⁰ but a child may not be held unless there are grounds, supported by evidence, to believe that he is guilty of an offense or is a person-in-need of supervision.⁷¹ Some courts have ruled that this indicates a need for a probable cause hearing before detention, but that question remains in the air since other courts have held that an adequate substitute such as bail or personal recognizance affording the minor an opportunity to be placed back in the community is sufficient. Even if probable cause is established, there must be a permissible reason for holding the child rather than sending him home, and both issues ought to be tested in a hearing.⁷² As a general rule throughout the United States, the child will be detained if the child is a runner; if he is a danger to himself or others; or if there is no place else to send him.

The district attorney will prepare all pleadings, including petition, subpoena, notice and summons, and all other necessary legal documents from the data provided by the intake counselor,⁷³ who may also verify petitions. The juvenile petition shall be verified⁷⁴ setting forth the facts which bring the child within the purview of the juvenile court act.⁷⁵ Necessary parts of the petition to assure compliance with due process rights must include the name and age, residence of the minor, the minor's parents or guardian, the relief requested and the specific law under which the juvenile is charged and facts sufficient to put the parties on notice of the alleged delinquent conduct as well as an endorsement of witnesses to be called by the petitioner.⁷⁶ After a petition is filed, summons shall issue,⁷⁷ stating the facts, the relief requested and the right of all parties to have an attorney present at the hearing on the petition. Service of summons, if within the county, shall be made personally by the delivery of a copy to the person summoned.⁷⁸ Assistance in providing the district attorney with needed information may be obtained from the intake worker.

The successful functioning of juvenile intake in Oklahoma depends upon the 'unholy alliance' and the cooperative efforts between the CRCS unit of the Department, the district attorney, and the Court in offering services of investigation, recommendations, diversion, and assistance to each other, all of which cannot help inuring to the benefit of the clients we serve, the families, and children in the State of Oklahoma.

IV. Adjudication

QUESTION 13. *What is meant by 'bifurcated' when referring to juvenile hearings?*

The law in Oklahoma requires a bifurcated juvenile hearing: that is to say, the first stage, an adjudicatory hearing,⁷⁹ to determine whether the allegations of the petition are supported by the evidence and whether a child should be adjudged to be a ward of the court; and the second stage, that of disposition to be made with respect to a child adjudged to be a ward of the court.⁸⁰

QUESTION 14. *Are juveniles entitled to due process of law in court?*

An examination of the Kent and Gault decisions tells us essentially that juveniles are entitled to the due process of law in court. The minimum concepts of due process require notice of charges, right to call witnesses, to present evidence, to challenge evidence, to cross examine, and the right to an impartial judge. The right of a juvenile to have timely notice in writing of the specific charge and factual allegations is now well entrenched in the law.⁸¹ In Oklahoma, the parent, guardian, and custodian are also entitled to notice.⁸²

QUESTION 15. *At what stage of the judicial process is a minor in Oklahoma afforded the opportunity of counsel?*

The right to counsel, due to Gault,⁸³ is assured at the adjudicatory stage of the proceedings, whether the child is being proceeded against as a delinquent or in need of supervision.⁸⁴ Oklahoma law affords the opportunity of counsel at every stage of the proceeding not only to the juvenile but to the juvenile's parents and guardians as well. The statute further provides that the court may appoint counsel without a request, if it deems representation by counsel necessary to protect the interest of the child or other parties.⁸⁵ Even though Oklahoma courts have not indicated whether a person is entitled to counsel in a dependent neglect case except where termination of parental rights is a possible remedy, it would seem the better rule to provide counsel because the possible loss of custody of a child is quite serious to all parties involved, more so, probably, than a short stay in jail. The evidence presented at adjudication will generally relate a combination of history, opinions, and value judgments concerning the facts, and it would seem that both the parent and child would have need for counsel. The due process claim for counsel, however, has not been recognized in some jurisdictions.⁸⁶

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QUESTION 16. *Who rules on a petition of disqualification for bias against a particular judge?*

It should be considered, even though Oklahoma courts have not ruled on the specific question, that where proper cause exists, it is possible to disqualify a particular judge from hearing a case against a juvenile.⁸⁷ Generally, the petition of disqualification for bias is heard and acted upon by the judge in question.⁸⁸

QUESTION 17. *Must adjudicatory hearings follow strict rules in presenting evidence?*

The adjudicatory hearing is to be conducted according to the rules of evidence,⁸⁹ and must be heard separately from the trial of cases against adults.⁹⁰ However, the Oklahoma courts have also held that dependent and neglect proceedings have elements of civil and criminal proceedings and strict rules of pleading and practice do not hold.⁹¹ It should be noted that the statute makes no exceptions or distinction with regard to the rules of evidence concerning the conduct of hearings whether the minor is alleged to be delinquent, in need of supervision, or dependent and neglected.⁹² Even though elements of civil and criminal proceedings are involved in the so-called special proceedings in the Stratton case,⁹³ does this excuse the underlying principle of Gault,⁹⁴ that a fact-finding hearing to determine if an individual committed an act ought not be different between adults and children? It would seem that, in dependent-neglect proceedings as in any other kind of case, the same dangers are inherent in the admission of evidence or the relaxation of procedure.

QUESTION 18. *Is hearsay evidence admissible?*

The Oklahoma courts have held that hearsay evidence is not admissible,⁹⁵ that the statements of a child obtained in violation of constitutional or statutory rights are inadmissible in delinquency and certification hearings,⁹⁶ and that a juvenile cannot be adjudicated delinquent on the basis of uncorroborated testimony of an accomplice.⁹⁷ Other jurisdictions are in accord with Oklahoma in refusing to allow hearsay evidence, for it violates the respondent's right to confront and cross examine.⁹⁸

In the Winship case,⁹⁹ the U.S. Supreme Court firmly established that in delinquency proceedings the process protected an accused against conviction except upon proof beyond a reasonable doubt. The Oklahoma statutes make no distinction in the burden of proof required at adjudication and provide that only if the court finds the allegations supported by the evidence,¹⁰⁰ may the child be made a ward of the court.¹⁰¹ It can be argued

that, in delinquency and in need of supervision cases in Oklahoma, the burden of proof is beyond a reasonable doubt since the child on becoming a ward may be institutionalized.¹⁰² However, the Oklahoma appellate court has not ruled specifically in that area. At least it can be said that if proof beyond a reasonable doubt is the standard in delinquency cases, then evidence is sufficient only when it justifies a finding that leaves no substantial uncertainty about the guilt of the accused.

In many jurisdictions throughout the United States, the minor has a right to a speedy trial.¹⁰³ The Court, in the case of *L.D.F. v. State*, 561 P. 2d 114 (Okla. CR.1977), ruled that the minor has a right to speedy trial in Oklahoma. The Oklahoma court cites with approval four considerations used in *Baker v. Wingo*, 407 U.S. 514 (1972): (1) the length of delay, (2) the reason therefor, (3) the party's assertion of the right to a hearing, and (4) the degree of prejudice to the party.

Generally, a public trial is considered inappropriate in juvenile cases because of the desire to protect the minor from publicity.¹⁰⁴ In Oklahoma, therefore, the hearings shall be private unless specifically ordered by the judge to be in public; however, persons having a direct interest in the case shall be admitted.¹⁰⁵

QUESTION 19.

Does the juvenile in Oklahoma have the right to demand a jury trial?

The U.S. Supreme Court in *McKinnis v. Pennsylvania*¹⁰⁶ ruled that there is not a constitutional right to trial by jury in juvenile court reasoning that the introduction of the jury trial would destroy the special character of the juvenile court. However, unless waived, trial by a six-person jury is allowed in Oklahoma.¹⁰⁷ Not only is the child afforded the right to trial by jury but also "any person entitled to service of summons"¹⁰⁸ has the right to demand it. There are no Oklahoma Supreme Court rulings, so we can only speculate that, even if a juvenile and his court-appointed attorney waived a jury, the Court would require a jury trial if his parents and their attorney demanded it. It is doubtful that any person other than the parents or guardian would succeed in overriding the juvenile's waiver. The statutory privilege to trial by jury refers to the adjudicatory proceedings only.¹⁰⁹

W. Disposition

The second stage of the juvenile hearing, the disposition, is the most important aspect of a juvenile court case. For the juvenile court judge must determine the proper disposition considering the best interests of

the child and the public.¹¹⁰ The opinion in *Kent v. U.S.*¹¹¹ suggests that on constitutional grounds disposition must be preceded by a hearing. The necessity for a hearing has been stated in New York,¹¹² even though the trial judge felt it was not necessary because of his intimate personal knowledge of the child and his background. All evidence helpful in determining the best interest of the child and the public may be used in the dispositional phase of the proceeding.

QUESTION 20. *How strict are rules of evidence during the disposition?*

Oral and written reports may be admitted and relied upon to the extent of their probative value even though they would not have been proper to consider at adjudication.¹¹³ The evidence, including reports and social history prepared for use by the court, is to be made available to the parents or guardians and their attorney, who are to be afforded a fair opportunity to controvert them.¹¹⁴ The judge is not bound at disposition by the strict rules of evidence which governed the fact-finding hearing because the object is to make the wisest and fairest decision possible, keeping in mind the child's needs, public safety, and resources available in the community.

QUESTION 21: *If a child is declared a ward of the court, what are alternatives suggested by Oklahoma law to guide disposition of a case?*

After the child is made a ward of the court, several alternative orders are suggested by Oklahoma law.¹¹⁵ The court may order the child placed on probation in his home or in the custody of any suitable person (if the conduct of parent or guardian has contributed to the delinquency) upon such conditions as the court shall determine, including requiring the posting of a bond.¹¹⁶ The court may commit the child to a private agency, approved by the Department,¹¹⁷ if practicable and must transmit to the agency the order of commitment and pertinent information concerning the child.¹¹⁸ The delinquent child may then be committed to the custody of the Department for an indeterminate period of time,¹¹⁹ an order which is not modifiable.¹²⁰ The court may also dismiss the petition or otherwise terminate its jurisdiction at any time for a good cause shown.¹²¹

It is generally assumed that statutory provisions which grant the right to counsel are broad enough to include representation at the disposition phase. The Uniform Juvenile Court Act, 826(a) specifically includes the right to counsel at every stage of the proceeding. The U.S. Supreme Court has not extended the Sixth Amendment right to counsel to the dispositional

stage, but there seems little doubt that to deny that child the right to an attorney at disposition would result in a reversal.¹²²

In the event that termination of parental rights is requested after notice is given to the parents and their rights are in fact terminated, the court may vest the agency or an individual with the authority to consent to the adoption of the child.¹²³

QUESTION 22. *Do Oklahoma laws committing children to a ward of the court status conflict with the U.S. Constitution equal protection clause, particularly on the differential in age for males and females?*

The Oklahoma Statutes provide that any child that has been adjudicated a delinquent and committed to the custody of the Department shall be discharged at such time as the Department determines reasonable probability that there is no longer any necessity for rehabilitation and treatment or for the protection of the public.¹²⁴ However, according to the next provision of the Oklahoma Statutes, all children adjudged delinquent and committed to the Department and not discharged according to 10 O.S. Section 1139(a) as noted above will automatically be discharged when the female child becomes eighteen and when the male child reaches twenty-one.¹²⁵ Certainly this latter provision is subject to a challenge as a violation of the equal protection of the law clause of the 14th Amendment of the Constitution of the United States. The U.S. Circuit Court of Appeals, in the case of *Lamb v. Brown*, has ruled that a section of the Oklahoma law was unconstitutional which allowed females up to eighteen to receive the benefits of the juvenile justice system but only allowed males up to age sixteen to receive the same benefits.¹²⁶ The same argument concerning equal protection of the law should be effective to declare unconstitutional the age discrepancy existing in 10 O.S. Section 1139(b)

QUESTION 23. *Does the parens patriae obligation of the state extend to providing expensive medical treatment?*

Discussions of constitutionality, however, may open Pandora's box in the area of 'right to treatment.' Do the Oklahoma Statutes when they mention 'rehabilitation,'¹²⁷ 'treatment,'¹²⁸ training,¹²⁹ care,¹³⁰ etc. mean to place the evaluation of 'treatment,' for instance, within the scope of the judicial system? If no treatment is in fact given, then the constitutional question of cruel and unusual punishment must be faced. The following excerpt from one of the many cases in the area of right to treatment illustrates vividly the problem with which we may be faced in the very near future:

We begin by noting that in general habeas corpus is available not only to an applicant who claims he is entitled to be freed of all restraints, but also to an applicant who protests his confinement in a certain place, or under certain conditions, that he claims vitiate (sic) the justification for confinement.

Turning to the considerations that apply with respect to juveniles in custody under the Juvenile Court Act, we begin by emphasizing that the Juvenile Court legislation rests, in various aspects, on the premise that the state is acting as *parens patriae*, that it is undertaking in effect to provide for the child the kind of environment he should have been receiving at home, and that it is because of this that the appropriate officials, while subject of course to the requirement that juvenile proceedings must not be arbitrary or unfair, are permitted to take and retain custody of the child without affording him all the various procedural rights available to adults suspected of crime.

...Suppose the child were taken seriously ill and required an oxygen tent, not available at the Receiving Home. It would not be seriously supposed that jurisdiction is lacking in the Juvenile Court to permit detention in an appropriate hospital. If a psychiatric condition were seriously endangering the health or perhaps life of the juvenile, there would likewise be jurisdiction in the Juvenile Court to make an appropriate detention arrangement.

The court noted that the *parens patriae* obligation of the state gave the child a legal right, saying:

...(T)he purpose stated in...(the District of Columbia Code) — to give the juvenile the care 'as nearly as possible' equivalent to that which should have been given by his parents — establishes not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the *parens patriae* premise of the law.¹³¹

It may well be that the law in Oklahoma does create a right to treatment. If no treatment is in fact given, the length of commitment to the Department provided by statute is clearly not related to the specific offense and, therefore, punishment may be cruel and unusual. As one author¹³² summarizes it, 'In the meantime, courts have the inherent power, which they are now beginning to exercise, to order the other branches of government

to afford the treatment, services and physical surroundings needed by wards of the court.'

QUESTION 24. *Is evidence taken during a dispositional hearing admissible in any subsequent court proceeding?*

There are some rather important ramifications of a child's proceeding to the dispositional stage. Evidence taken in a disposition hearing cannot be lawfully used against the child in any other proceeding in any court, except in subsequent cases involving the same minor under this act.¹³³ The records made as a result of the case being filed are open to public inspection only by order of the court.¹³⁴ A peace officer may fingerprint a child if reasonable or probable cause exists to believe a crime was committed by the child and the records kept by law enforcement shall be maintained separately and they shall not be open to the public.¹³⁵ The records of the proceeding where a child was found delinquent or in need of supervision can be ordered by the court destroyed five years after male or female reaches majority.¹³⁶ This may be done, with or without a formal hearing, if the child has been of good behavior since majority. The court may find the child to be reformed, order the sheriff, chief of police, and court clerk to destroy or obliterate the entire file and record of the case including docket sheets, index entries, court records, etc.¹³⁷ The court, moreover, may order it done instantler or continue the matter for one additional year before denying or granting the order.

The disposition hearing has been referred to as 'the Heartbeat of the Juvenile Court.' The school, police, and parents have been unable to change the child; therefore, the intake officer and prosecutor have determined that the government should intervene in a family's life. How can the court successfully intervene in the life of a child where so many others who also care have failed?

VI. The Court Report

The court report provides the court's first lead into the problems of the family and is important in outlining an individualized treatment plan which can help the family to succeed. The purpose of the report is to provide a basis for individualized treatment. The court in the case of *In re: Patterson*¹³⁸ stated that the disposition should be tailored to the offender, not the offense, so as to serve the child's welfare and the best interest of the state. One court¹³⁹ indicated the juvenile's statutory and constitutional rights were violated when the only evidence received at disposition was a two-year-old court report.

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QUESTION 25. *Who is responsible for developing the court report?*

The probation counselor makes the court report after several discussions with the child and parents to learn the cause of the conduct that brings the child to court, the weaknesses to be overcome by the persons involved, the strengths to build on, the interrelationship of each person to the other as well as the communication, the physical, emotional, and psychological problems to be resolved. The treatment plan must relate to the individual needs of that child and point out how it will satisfy those needs. The report may be an excellent social analysis, but if it does not educate and sell the plan to the court, it is a complete waste of time and effort.

QUESTION 26. *What are the elements of a well written court report?*

It would be helpful if the court report contained all or part of the following:¹⁴⁰

1. A brief description of the offense, outlining the interest, if any, the victim has in the case. Restitution must be considered as well as the nature of the child's participation in the offense. Consideration needs to be given as to whether he was a leader, follower or co-equal participant in the offense charged.
2. A list of previously known delinquencies, with the disposition of each one and a comment upon the effectiveness of each, should be provided. It should contain police contacts, referrals to intake and diversion, and should indicate whether he was institutionalized or placed on probation and an evaluation of what ways those dispositions failed or helped.
3. The attitude of the child regarding the offense for which he is in court is vital. Is he bragging, remorseful, ashamed, indifferent, sullen, or defiant concerning the offense? Is there a difference in his version and the official version of the offense? The attitude of the child toward self, family, authority, peers, and previous delinquencies should be covered in the probation counselor's report.
4. The family interrelationship, the child's adjustment, the family life, the general atmosphere and discipline in the family are essential in providing the court with a complete picture of the family setting.
5. The probation counselor should describe the home including space, sleeping arrangements, housekeeping standards, cleanliness, and the general character of the neighborhood. Is the residence a home or a boarding house in a high delinquency area? The economic level is important as well as whether the child's friends are welcome too little or too much.

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6. How does the family see religion? Are they church members; what are the attitudes of the family toward ethics, values, and morality?
7. A summary of the child's academic experience is important in relation to his achievements, special interests, and talents which can be used as a basis for treatment. The child's absences should be explained as well as his citizenship, deportment, and peer and faculty relationships.
8. Is the child employed? The attitude of the child toward work and supervision is relevant. The manner in which he uses his earnings is also important in the total evaluation of the child.
9. The probation counselor should describe the child's talents, hobbies, sports, and leisure activities and evaluate each so as to draw on the strengths which might be utilized in assisting the child in an effective rehabilitation program.
10. Physical and psychological health information if available pertaining to the child and family must be evaluated. The evaluation and the meaning of this information should be stated in a composite and understandable form.
11. A plan should be devised which summarizes the child's strengths, weaknesses, and needs.. The causation of his problems, the treatment plan, the methodology, its functions, and goals should be set forth with particularity.

It would be a help if long school reports were summarized and the probation counselor would endeavor to present to the court a clear, concise picture that will introduce the court to the child, his background, and a plan for his future.

QUESTION 27. *On what basis does the court intervene in the family life of children who become involved with the juvenile justice system?*

The judge must set the style of the disposition hearing which should vary with almost every hearing according to how best the child will be affected. The judge must manage the hearing, set the rules and procedures and make clear though as gently as possible, that he is in charge and that he will decide the case only when each side has had a full and complete hearing.

The probation officer must be an objective social analyst as well as a counselor who can present his analysis and findings as well as listen to the proposals of others to help the court achieve the proposal best suited for the child. The probation officer must be a sympathetic therapist not an advocate for the child ready and willing to implement the treatment plan whether or not he fully concurs.

The lawyer must help his client make his presentation and help his client

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question the adequacy and sufficiency of the facts and opinions presented by others. The lawyer should also discover the options available and criteria for each to present the option best suited to his client's need. He must understand that juvenile court is like no other court, the whole thrust being individualized treatment, preventing future trouble not by punishment but by removal of the cause of trouble. The lawyer is very often a spokesman more than an adversary.

The more the family participates, the more likely they are to accept the treatment plan which, of course, will enhance the chances of success. Expressions from each family member present, if encouraged by the court, will help assure the success of the treatment process if it allows all members to feel they have had a part.

An expert such as a psychologist, teacher, or physician may appear in a particular case to make a contribution to disposition. The expert should have a wealth of knowledge about the child to be evaluated and used in the decision-making process.

When all of the participants have spoken or reacted and all views have been expressed, the court must make its decision. The decision, which is the court's alone to make, must outline a treatment plan and state its rationale. Generally, the decision should stipulate the length of treatment, which may continue until involuntary treatment is no longer necessary. The court's decision must delegate authority to the worker, agency, parent, or friend and must indicate the court's continuing interest because, when delegating its authority, it is still accountable for its use. The court cannot hide behind the professionalism of those to whom the power is delegated because ultimately the court is responsible to the people. The decision must make it abundantly clear that changes can be made in its order and that, if the family does not reform, the court can remove the child without waiting for further harmful conduct.

In Oklahoma the court may receive social reports¹⁴¹ which are to be made available not only to the child but to the parents as well.¹⁴² Effective legal representation at the disposition requires that the attorney have access to the social reports since they are susceptible to challenge and impeachment and will undoubtedly influence the judge. A question whether the judge may read the report prior to reaching a decision on whether the allegations of the petition have been proved has risen. The answer to this question should be an emphatic 'no, he may not,' at least in the jurisdictions of New York by Statute¹⁴³ and in California¹⁴⁴ by the reversal of a finding of delinquency where the court reviewed the social study or court report before completing adjudication.

No view of disposition in Oklahoma would be clear without considering the role of the probation counselor. The counselor receives his referrals

from an intake worker or the court, or he may receive an assignment concerning a case where adjudication is deferred; but consideration for our purposes will be directed toward formal adjudication and probation.

The counselor is to investigate and prepare a report to the court outlining his recommendations and a treatment plan. The probation counselor must also assess the probationer by getting to know the juvenile, his family, teachers, school counselors, and anyone else who is aware of the influences which have contributed to the probationer's deviant behavior. The assessment of needs can point to specific treatment goals about which the counselor must make the court aware.

After the counselor determines needs, he can provide supervision of four types: intensive, normal, minimum, and open supervision. The guidelines¹⁴⁵ recommend that the probation counselor be called upon to provide guidance and counseling in the following areas: one-to-one counseling with the juvenile, family counseling, crisis intervention, vocational guidance, and group counseling. The counselor must also know those resources available for disposition and may attempt to secure placements using the following priorities: with a relative, an alternative placement, placement in a private institution, and last, in a public institution.

It is recommended that a judicial review be conducted every six months and that the probation counselor provide the court with a written report depicting the juvenile's progress. The requirement for a formal review denotes a violation of probation, and so the probation counselor must coordinate with the intake worker regarding serious violations and request an application to the judge for review of probation. In this regard, the counselor must appear in court and see to it that the probationer appears as well.

The services provided by CRCS at disposition are absolutely invaluable to the court, counsel, and the parties. Without the services contemplated by the 'unholy alliance,' the court would have very little if any expert opinion, evaluation, or background on which to base an intelligent, informed disposition.

QUESTION 28. *On what basis does the court intervene in the family life of children who become involved with the juvenile justice system?*

It is easy to understand why dispositional hearings have been labeled 'The Heartbeat of Juvenile Court,' for it is at disposition that justification for court intervention into family life begins to appear. At this point the courts, if and only if given the tools with which to work, can make some meaningful reforms in the basic unit of society, the family; because 'The

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reforms of the juvenile court criteria and procedures will be of little avail in making the rehabilitative promise come true as long as the means, the personnel, the talents, and public support necessary to accomplish this regeneration of delinquent juveniles remains lacking.¹⁴⁶

VII. Certification

QUESTION 29. *What is meant by the term 'certification?'*

The cooperation fostered by the 'unholy alliance' between the district attorney, Court Related and Community Services, and the court is the key to the complex problem of certification in Oklahoma. *Certification* is the process whereby jurisdiction of the juvenile court of a child under the age of eighteen is relinquished for the purpose of his prosecution for a crime, which if committed by an adult would be a felony.¹⁴⁷ 'The most direct way to exclude certain children from the juvenile court and consign them to a criminal trial is to deny the court jurisdiction over children who commit certain offenses.'¹⁴⁸ Therefore, it behooves those involved in the decision to exclude the minor from the juvenile justice system, to have relevant information about all aspects of the case upon which to base an informed judgment certifying the minor to be tried in the adult system.

QUESTION 30. *List ways you consider denial of basic due process rights were denied to the Juvenile Kent.*

The case of *Kent v. United States*¹⁴⁹ began the process by which the law pertaining to certification (waiver or transfer as it is referred to in a majority of jurisdictions) was reconsidered. In *Kent*, the juvenile was interrogated by the police and admitted burglary, robbery, and rape. The juvenile court did not grant the juvenile's motions for hearing or for access to the court's social records, nor would it give the reasons for its waiver of jurisdiction. The juvenile was indicted and convicted of housebreaking and robbery and received a sentence of thirty to ninety years in prison. An appeal of the conviction urged that irregularities occurred at the hearing whereby the jurisdiction of the juvenile court was waived to the adult criminal court. The conviction was, however, affirmed by The District of Columbia Court of Appeals. The United States Supreme Court reasoned that the order waiving juvenile court jurisdiction was invalid because of failure to grant a hearing as requested by the juvenile, failure to allow the juvenile's attorney access to records, and the court's failure to state reasons for its order waiving jurisdiction. The Supreme Court (in *Kent*) concluded by saying, 'There

is no place in our system of law for reaching a result of such tremendous consequences without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons.' The court did not leave any doubt that the denial of important procedural safeguards in state courts will be subject to serious attack on due process grounds. Moreover, the Kent standards requiring due process and fair treatment have been cited with approval in Oklahoma cases.¹⁵⁰

The power of a juvenile court to certify a child is limited in many states by a minimum age under which a child may not be sent to criminal court, but apparently in Oklahoma the power to certify depends only upon whether a child is charged with delinquency as a result of an offense which would be a felony if committed by an adult.¹⁵¹

The juvenile petition must be verified¹⁵² and based on all allegations of delinquent acts only, that is the violation of a criminal felony statute.¹⁵³ It is imperative (due largely to double jeopardy considerations¹⁵⁴) that the juvenile petition or motion to certify pray for certification to stand trial as an adult or, in the alternative if certification is denied, that further proceedings be held to adjudicate the delinquency of the child. In that Oklahoma case, the court found jeopardy attaching when a delinquency adjudication began and ruled that a subsequent consideration of certification was error.

The following two cases point to the necessity of considering the petition or motion to certify in advance of an adjudication hearing based on allegations of delinquency. *JTP v. State*¹⁵⁵ allows the court the authority, prior to commencement of adjudication of delinquency, to consider certification as long as notice is properly given. A child that was found to be in need of supervision on the basis of an alleged homicide could not thereafter be certified for trial as an adult on the homicide allegations since he was a ward of the court by virtue of the previous proceedings.¹⁵⁶ The certification, therefore, was barred by constitutional provisions regarding former jeopardy.

QUESTION 31. *Under Oklahoma law who must be notified in writing, or by publication, of allegations or charges to be considered at certification?*

Oklahoma statutes and case law require that notice be given the child and his parents or guardian, in writing, or if address is unknown by publication, of the specific charge or factual allegations to be considered at certification.¹⁵⁷ *JTP v. State*¹⁵⁸ indicated that the essentials of due process and fair treatment require that notice be given to the child and his parents or guardian.

The minor in custody has the same right to be released upon bail as would an adult under the same circumstances.¹⁵⁹ No child under the age of

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sixteen shall be confined in jail with criminal persons: However, a child of twelve or older may, with the consent of a judge or director, be placed in jail or detention in a room entirely separate from adults.¹⁶⁰ It is required, therefore, that bail be set for any minor if he is not released from custody otherwise as provided by law in Oklahoma.¹⁶¹

Kent v. U.S. emphasized the right to counsel at certification proceedings.¹⁶² The juvenile's right to counsel has also been acknowledged in Oklahoma¹⁶³ when the court stated that due process and fair treatment required representation by counsel who has been given access to all records or reports which the court may consider. And this right, of course, applies to certification as well as matters concerning adjudication, as have been previously discussed.

VIII. Certification Hearing

QUESTION 32. *Are juveniles entitled to a jury trial to determine prosecutive merit of charges brought against them?*

At the initial appearance before the committing magistrate who advises the minor of his rights, including counsel, detention hearing, bond, etc., the minor may request a hearing as to prosecutive merit; thus, it will be necessary then to set a date for that first stage of certification. The hearing concerning prosecutive merit is an adversary one,¹⁶⁴ but the parties are not entitled to a jury trial.¹⁶⁵

The certification hearing is properly a bifurcated proceeding with the question of prosecutive merit first being resolved.¹⁶⁶ If prosecutive merit is resolved and is adverse to the minor, the court will make arrangements for a current psychological examination to ascertain the sophistication and maturity of the juvenile.¹⁶⁷

QUESTION 33. *Must probable cause be found before a minor is certified?*

The prosecutive merit hearing will be conducted in much the same manner as would a normal preliminary hearing in an adult felony trial. The law in Oklahoma regarding certification requires that prosecutive merit must be found to exist,¹⁶⁸ and that no presumption exists that a child who has committed a very serious crime is not receptive to rehabilitative treatment.¹⁶⁹ The probable cause standard of proof should be used as it affords the opportunity to screen out all cases where probable cause does not exist. A majority of jurisdictions do seem to require probable cause to be

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found before a minor is certified,¹⁷⁰ and Oklahoma apparently is in accord.¹⁷¹

Although the term preliminary hearing is referred to in 10 O.S. Section 1112(b) 8, the court in the case of *Dorsey v. State*,¹⁷² held that it merely means a preliminary proceeding or fact-finding hearing by the juvenile court. One Oklahoma case indicates that the certification hearing in juvenile court is comparable in seriousness to a felony prosecution and therefore must meet the criteria of due process and fair treatment.¹⁷³ Constitutional safeguards must be afforded the minor in certification matters.

In determining the issue of prosecutive merit, the court may not receive evidence which would be inadmissible in the trial of the case.¹⁷⁴ However, a juvenile was certified as an adult on the uncorroborated testimony of an accomplice and the court justified the holding by saying any person certified is still protected by 22 O.S. Section 742 which indicates that a conviction cannot be had upon the testimony of an accomplice unless he be corroborated by other evidence, at the trial upon the merits.¹⁷⁵ In order to comply with the rulings in *Kent*, *JTP v. State*, *DGB v. State*, requiring 'due process and fair treatment,' the best practice is to recognize and follow the basic rules pertaining to admissibility of testimony and evidence at the prosecutive merit hearing.

Oklahoma courts have recognized the right of a minor to stipulate to certification,¹⁷⁶ particularly if he has been represented by counsel and both parents are present at the time of the stipulation. As long as the minor is afforded an opportunity to be heard and the court makes certain no duress or coercion has been used to require the minor to stipulate and as long as the minor agrees with the stipulation and understands the consequences of it, he may agree to be certified.¹⁷⁷

QUESTION 34. *Can a juvenile in Oklahoma waive his right to counsel during certification proceedings?*

While there appears to be no question that the minor is entitled to counsel at certification proceedings in Oklahoma, it is not so clear whether the juvenile can effectively waive his right to counsel. Oklahoma has adopted the position that if a juvenile who is not represented by counsel at certification and who thereafter enters a plea of guilty, that plea cures the defects which occurred at certification¹⁷⁸ and a plea of not guilty after certification does not waive any defect in the certification proceeding.¹⁷⁹ New Mexico has solved the problem by holding that right to counsel may be waived at the certification hearing and that waiver may be accomplished when, upon assignment in the criminal court, no objection was made to the lack of an offer of counsel.¹⁸⁰ It is hoped that Oklahoma would allow

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waiver of an attorney, by a minor, only after very careful inquiry by the court.

QUESTION 35. *What reasoning underlies rejection in subsequent proceedings that testimony given by a juvenile during the certification hearing?*

Testimony given by the juvenile at the prosecutive merit or certification hearing should not be used against the minor in the subsequent adult case.¹⁸¹ The testimony given at that stage of the certification hearing is solely for the purpose of establishing his right to be proceeded against in juvenile court. It is obvious that since the child will have to make detrimental statements to show his amenability to treatment, the minor, therefore, should be able to testify freely without fear.

QUESTION 36. *What are the minimum standards courts should use in its decision for certification?*

In Oklahoma, after prosecutive merit is established, the issue of certification is within the discretion of the trial judge.¹⁸² Oklahoma is one of the five states that spell out the minimum criteria the court should use in making its decision¹⁸³ for certification, but generally no precise standards are formulated and the phrase 'best interest of the child or the public' is used. The court in *Kent v. United States*¹⁸⁴ directed the trial judge to use the following criteria: seriousness of the offense, the manner in which it was committed, whether it was against property or the person, sufficient evidence upon which a Grand Jury might be expected to return an indictment, desirability of trying the juvenile with adult co-defendants, his sophistication and maturity, the juvenile's prior record, protection of the safety of the public, and the juvenile's chance of rehabilitation. The Kent criteria, almost word for word, describe the eight standards for certification that Oklahoma would later adopt,¹⁸⁵ for use when a child is charged with delinquency as the result of an offense which would be a felony if committed by an adult. *Freshour v. Turner*¹⁸⁶ describes the criteria for determining whether a child should remain under the jurisdiction of the juvenile court simply as knowing right from wrong and accountability. The Freshour case does not speak to the application of statutory standards and, therefore, should not be considered as a case outside the standards later to be required by the Sherfield case.

The law regarding certification in Oklahoma should withstand the Constitutional barrage that some states have undergone because of their failure to prescribe criteria for transfer or waiver proceedings.¹⁸⁷ In contrast, California, in a similar situation to the Michigan case cited earlier, merely states that standards are unnecessary and undesirable because they would

require adherence to mechanical categories which the spirit of the law forbids.¹⁸⁸ The subjectivity in the California case is bothersome because whether one is fit and proper to be dealt with under the provisions of juvenile law will rest with judges who will apply many different passions and prejudices to certification. Standards properly devised will insure a more even-handed application of the law and will assure compliance with the equal protection clause of the U.S. Constitution.

When a determination is made the prosecutive merit exists, the courts will arrange for a psychological evaluation, if one does not currently exist.¹⁸⁹ The court will set a date that will give all parties sufficient time to obtain their evaluation for purposes of the certification disposition. If, however, the court finds that a misdemeanor has been committed instead of a felony then it must dismiss the motion to certify and determine whether the parties are prepared to move forward with trial of the misdemeanor on a delinquency basis. A jury trial on the misdemeanor may be requested or waived and a reasonable time allowed for preparation for trial in the juvenile division. This is an important reason why the juvenile petition should request in the alternative that either the minor be certified to be tried as an adult or that the minor stand trial as a juvenile.

These ultimate findings are essential to an order of certification: a finding that the child is capable of knowing right from wrong,¹⁹⁰ prosecutive merit,¹⁹¹ and amenability to rehabilitation.¹⁹² These findings do not mean that the court's consideration as to certification be mathematically proportional among the eight factors outlined in Kent, but there must be substantial evidence against the child's claim to the benefits of the juvenile justice system.¹⁹³ *Corbin v. U.S.*,¹⁹⁴ cited with approval in *Calhoon v. State*, announced the rule that substantial evidence is much more than the mere creation of suspicion of the existence of the fact sought to be established. Evidence must be considered as a whole, if one or more element of proof is insufficient, the entire body of evidence may be considered sufficient to support the fact to be established.

Between the prosecutive merit hearing and the date set for certification disposition, it is the duty of the probation counselor to prepare a certification study for delivery to the district attorney and the attorneys for the minor and parents. The study shall contain information as to whether the juvenile is charged with an adult co-defendant if certified to stand trial as an adult or whether the juvenile may be charged with juvenile co-defendants; a consideration of the psychological evaluation; the complete record from all jurisdictions concerning probation, parole, and prior judicial commitment.¹⁹⁵ The parties are permitted to contest or add to the facts in the certification study and to introduce testimony of witnesses, including expert witnesses. The assimilation of all the information will

enable the court to make an informed decision as to certification. Prior to the 'unholy alliance,' the court did not have the help it needed to obtain all pertinent information necessary and helpful in processing the certification proceeding.

IX. Appeals

QUESTION 37. *May the state appeal a decision where certification has been denied?*

Any party that is aggrieved by any order or decree may appeal to the Supreme Court in the same manner as other appeals are taken. However, if the appeal is taken from an adjudication of delinquency or in a proceeding certifying a juvenile to stand trial as an adult, then the appeal shall be taken to the Court of Criminal Appeals in the same manner as other appeals are taken to that court.¹⁹⁶ It should be noted that an order certifying a juvenile to stand trial as an adult is a final order from which an appeal may be taken.¹⁹⁷ If certification is denied, however, the State has no right of appeal.¹⁹⁸

The pendency of an appeal will not suspend the order of the District Court nor discharge the child from custody unless the Supreme Court or Court of Criminal Appeals shall specifically order suspension or discharge.¹⁹⁹ If the appellate court does not dismiss the proceedings discharging the child, it may affirm or modify the District Court order and remand the child to that court for supervision and care as if such an order had been made by the court without an appeal having been taken.²⁰⁰

Oklahoma appellate decisions in delinquency matters have uniformly established that an order pertaining to the adjudicatory hearing is not appealable until the disposition order is rendered.²⁰¹ The failure to file any objections to the adjudicatory stage of the proceedings within the statutorily prescribed time is tantamount to a waiver of those defects.²⁰²

QUESTION 38 *Does a juvenile in Oklahoma have a legal right to appeal?*

The right to appeal is, of course, a statutory one and is not guaranteed by the Constitution. The Supreme Court of the United States has yet to hold that states must provide for appellate review in criminal cases.²⁰³ The same view holds true in many states that the right to a review of juvenile court proceedings is not a denial of due process but simply a matter of grace.²⁰⁴ The right to appeal in juvenile cases was expressly left open in the Gault decision.²⁰⁵ In Oklahoma the right of a juvenile to appeal is without

question, and the court has further decided that the parents or guardian have that right to appeal as well.²⁰⁶ Most statutes state that the right to appeal belongs to 'any person aggrieved,'²⁰⁷ and therein lies the difficulty, in determining who is an 'aggrieved party.'²⁰⁸

Some states require that the juvenile and his parents be expressly notified of their right to appeal. Non-compliance with that specific statute has in one case rendered adjudication invalid.²⁰⁹

The right to a transcript of proceedings has arisen from the language in the Gault case,²¹⁰ and applies to an indigent juvenile as well, even though the statutes may have made no provision for it.²¹¹ The latest Oklahoma case in that regard requires a transcript of proceedings to be made.²¹²

Few state statutes provide for the right to counsel on appeal. It is a logical extension of the Gault case,²¹³ to authorize the appointment of counsel for appeal. It may be that right to counsel on appeal could be tied to equal protection grounds as in the case of adult criminal appeals.²¹⁴ The right to counsel on appeal is well justified solely on the basis of fairness.

X. Revocation

*Attention is given to the revocation process in the Guideline for Intake, Probation and Parole for the State of Oklahoma.²¹⁵

QUESTION 39. What is the goal of probation and parole?

The goal of probation and parole is the adjustment of the juvenile in the community with support provided by the counselor.²¹⁶ The court related and community service workers should provide four kinds of services for the probationer and parolee: service related to the reason the offender was brought into the probation and parole system; assistance in adjustment to status as probationer or parolee; provision of information and referrals to community resources; and help in the creation of conditions permitting readjustment into the community through full utilization of resources.²¹⁷ It is necessary for the counselor to assess the needs of the probationer and parolee by ascertaining his background and the type of service needed to remove individual and social barriers to rehabilitation. Then the counselor must identify the resources available and promote the development of needed community services.

QUESTION 40. What is probation?

Probation is a form of disposition used where confinement is not involved. Parole service is used to describe the planning and supervision of a

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juvenile, adjudicated delinquent or juvenile who is in need of supervision and placed in the custody of DISRS in an institutional setting and then returned to the community. Probation is therefore, a court function, while parole is an administrative decision.

The guidelines recommend that probation be reviewed judicially every six months.²¹⁸ It is the responsibility of the probation counselor to submit in writing a review of the juvenile's status. If a new petition is required for a serious violation of the rules and conditions of probation, the probation counselor does so in coordination with the intake worker. A formal review of probation asserts that a juvenile on probation has violated the terms of his probation and must appear before the court. At any time a formal review is set, notice of time, date and place must be given to the parties at least forty-eight hours in advance of the hearing. The notice must contain a copy of the new petition or motion for review so that the parties are fully informed as to the necessity of appearance.

The formal review of probation should be conducted in much the same manner as the dispositional hearing. All rights available at disposition should be accorded to the parties at the formal review. The court worker should provide the court with a plan for treatment that will best meet the needs of the child.

Parole rules and regulations are established administratively by the Department and can be a valuable aid in assisting the juvenile in developing self-control. Adherence to the rules provides the yardstick by which a juvenile's performance while on parole can be measured. If a juvenile on parole commits a delinquent act, the offense may be filed in the court of the county in which the offense occurred and a judicial decision made as to the validity of the petition. The district attorney may find that there is prosecutive merit to the delinquent offense and still decline to prosecute. If that occurs, the parole counselor may commence revocation proceedings administratively. If the district attorney finds no prosecutive merit, then that alleged delinquent offense should not be considered at subsequent revocation proceedings. The parole counselor may request the assistance of the state office of the CRCS unit of DISRS in the revocation hearing.

No information gained by questioning a child shall be admissible into evidence against a child in pre-revocation conferences unless that questioning is done in the presence of a child's parent, guardian, or attorney after all are fully advised of their legal rights.²¹⁹ Unless the parolee waives his right to parole revocation proceedings at the pre-revocation conference, a hearing must be held by the hearing examiner of the department.

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QUESTION 41. *What steps must be included in the revocation process?*

The preparation for a revocation hearing involves written notice to the parolee and parents or guardian, notice of time and place of hearing, appointment of counsel, and detention. The guidelines indicate that if the family cannot afford counsel, an attorney is to be appointed by the judge and is to be paid from the court fund. Rule 18 promulgated by the Oklahoma Supreme Court for the district court provides that the juvenile division of the district court may aid the administrative process of DISRS. The rule further states that the court shall advise the juvenile, parents, and others concerned of their rights, determine eligibility for and amount of bail, decide any intermediate custody issue, establish eligibility for and amount of bail, establish eligibility for appointment of counsel, and fix the compensation to be paid by the court fund. court fund.

The court is also required to issue necessary orders to assure due process including issuance of compulsory process for attendance of witnesses. The rule does not preclude the district court from acting concurrently with parole revocation proceedings in exercising its own jurisdiction, nor does it preclude a new petition from being brought on the allegations on which parole is sought to be revoked.

Minimum requirements of due process to be followed at the hearing are the following: written notice of violation, disclosure to the parolee of the evidence against him, opportunity to be heard and to present witnesses, right to confront and cross examine, right to a neutral and detached hearing body, and a written statement by the examiner of his findings and conclusions of law. The review board (DISRS) will review the transcript of proceedings and make a decision concerning the merit of the appeal, giving written notice of its decision.

XI. Conclusion

QUESTION 42. *Has evidence been produced to show beyond reasonable doubt that the 'Unholy Alliance' is a successful model for working with those children who come to the attention of the courts?*

The question whether the 'unholy alliance' will succeed or fail is unanswered. The 'unholy alliance' will fail to provide the help and hope that are the promise of the juvenile process if we are unwilling to give it a chance to work. But the 'unholy alliance' can succeed if all participants in the juvenile process work together for the 'best interest of

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the child,' and the protection of the community and it just may be that some day the juvenile court concepts will not be referred to as the unfulfilled promise.

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FOOTNOTES

*SJR 13 Committee Judges Lowell Doggett, Clarence Maher, Stewart Hunter, Joe Jennings, Glenn Carter, Loys Criswell, Don Dale, and Alan J. Couch.

1. 10 Okla. Stat. § 1101-1504.
2. 10 Okla. Stat. Ann. § 1101, see annotation concerning legislative intent.
3. 10 Okla. Stat. § 1103(a) '... Thereupon, the court may make such informal adjustment as is practicable without a petition, or may authorize a petition to be filed by any person.'
4. 10 Okla. Stat. § 602(1).
5. *Ibid.*, (2).
6. *Ibid.*, (3).
7. *Ibid.*, (4).
8. *Ibid.*, (5).
9. Agreement for the Provision of Intake Services, Probation Services and Parole Services and Maintenance of a Uniform Juvenile Statewide Court Reporting System and Establishment of Uniform Standards, Policies, Practices and Procedures, dated October 1, 1975, between the Oklahoma Supreme Court System and the Department of Institutions, Social and Rehabilitative Services of the State of Oklahoma, pages i — ix.
10. 10 Okla. Stat. § 601.
11. *Ibid.*, 603.
12. Agreement, Supreme Court and Department, page v.
13. Illinois Law (1899), § 5, pp. 131-137.
14. Monrad G. Paulsen and Charles H. Whitebread, *Juvenile Law and Procedure* (Reno, Nevada: National Council of Juvenile Court Judges, 1974), p. 1.
15. Herbert Lou, *Juvenile Courts in the United States*, (New York: Arno Press, 1972), p. 2.
16. *Ex parte Sharp*, 96 Pac. 563 (1908).
17. *Ex parte Walters*, 221 P.2d 659 (1950).
18. *Ex parte Crouse*, 4 Whart. 9 (1839).
19. Barnard Flexner and Reuben Oppenheimer, *The Legal Aspect of the Juvenile Court* (Wash., D.C.: Govt. Prntg., 1922), pp. 8-9.
20. *Ibid.*, p. 7.
21. Bruce Peterson, 'Juvenile Process: The Continuing Myth,' *Services to Juveniles and Their Families* (Norman, Oklahoma: University of Oklahoma Press, 1975), p. 52.
22. *Commonwealth v. Fisher*, 62 At. Rep 198 (1905).
23. *Prescott v. State*, 19 Ohio St. 184, Am. Rep. 388 (1869); *Farnham v. Pierce*, 141 Mass. 203, 55 Am. Rep. 452 (1886); *State v. Kilvington*, 100 Tenn. 227, 45 S.E. 433 (189); *Ex parte Liddell*, 93 Cal. 633, 29 Pac. Rep. 25 (1892).
24. *Haley v. Ohio*, 68 S. Ct. 302, 322 U.S. 596 (1948).
25. *U.S. v. Dickerson*, 168 F. Supp. 899 (1958); *In re Contreras*, *McDaniel v. Shea*, 108 U.S. App. 15, 278 F.2d 460 (1960); *In re Holmes*, 379 Pa. 613, 109 A.2d 523 (1954).
26. *Mapp v. Ohio*, 367 U.S. 643; 81 S.C. 1684 (1961).
27. Paulsen and Whitebread, *Juvenile Law & Procedure*, pp. 10—11.
28. *Kent v. United States*, 383 U.S. 541; 86 S. C. 1045 (1966).
29. *Ibid.*
30. *In re Gault*, 387 U.S. 1; 87 S. C. 1428 (1967).
31. *Ibid.*
32. *In the Matter of Samuel Winship*, 397 U.S. 358; 90 S. Ct. 1068 (1970).
33. *Ivan V. v. City of New York*, 407 U.S. 203, 92 S. Ct. 1951 (1972).
34. *In re Whittington*, 391 U.S. 341, 88 S. Ct. 1507 (1968); *Debacker v. Brainard*, 396 U.S. 28, 90 S. Ct. 163 (1969); *Duncan v. Louisiana*, 391 U.S. 145, 88 S. Ct. 1444 (1968); *DeStefano v. Woods*, 392 U.S. 631, 88 S. Ct. 2093 (1968).
35. *Debacker v. Brainard*, 396 U.S. 28, 90 S. Ct. 163 (1969).
36. *McKiever v. Pennsylvania*, 403 U.S. 528, 91 S. Ct. 1976 (1971).
37. *Ibid.*, pp. 1986—1988.

38. 10 Okla. Stat. § 1101(a).
39. *Ibid.*, (b).
40. *Ibid.*, (c).
41. *Ibid.*, (d).
42. 10 Okla. Stat. § 1107 A, B & C.
43. 10 Okla. Stat. § 1103(a).
44. *Ibid.*
45. Ferster & Courtless, 'The Beginning of Juvenile Justice, Police Practices, and the Juvenile Offender,' 11 Vand. L. Rev. 367 (1969).
46. The Illinois Juvenile Court Act of 1965, Ch. 37 § 703—7 (Ill. Stats. Ann., 1972); North Dakota Cent. Code § 27—20—10 (supp., 1973); Colo. Rev. Stats. § 22—3—1(3) (Supp., 1967); *Shioutakon v. District of Col.* 236 F.2d 666 (DC. Cir., 1956), authorized intake officer to confer with juveniles and other interested parties to determine whether court process should be used; *In re State in Interest of Tyler*, 262 So. 2d 815 (La. App., 1972), held preliminary inquiry and social history was sufficient to satisfy statutory requirement that a preliminary inquiry be made prior to informal adjustment or authorization to file a petition; *in re Hess*, 341 N.Y.S.2d 11 (1973), right to counsel not recognized at intake conference.
47. 10 Okla. Stat. § 1109(a); *Crook v. State*, 546 P.2d 648 (1976); *JTP v. State*, 544 P.2d 1270 (1975).
48. 10 Okla. Stat. § 1110.
49. 10 Okla. Stat. § 1101(a); *Freshour v. Turner*, 496 P.2d 389 (1972), any juvenile could not be prosecuted as an adult if the person was under the age of 18 years, without a certification hearing.
50. 10 Okla. Stat. § 1101(b).
51. *Ibid.*, (c).
52. *Ibid.*, (d).
53. 10 Okla. Stat. § 1101B.
54. 10 Okls. Stat. § 1102.
55. 10 Okla. Stat. § 1103(a).
56. Alan J. Couch, 'Diverting The Status Offender From the Juvenile Court,' Juvenile Justice (Reno, Nevada: National Council of Juvenile Court Judges, Nov. 1974), pp. 18-22. Also see Alan J. Couch, 'Children in Oklahoma Courts,' Services to Juveniles and Their Families (Norman, Oklahoma: University of Oklahoma Press, 1975), pp. 77-86.
57. Couch, 'Diverting the Status Offender.'
58. Division of Court Related and Community Services Guidelines for Intake, Probation & Parole, Department of Institutions, Social and Rehabilitative Services, 1976, p. 13.
59. *Ibid.*
60. *Ibid.*
61. Jill E. McNulty, 'The Right To Be Left Alone,' 11 American Criminal Law Review 132 (1972).
62. Okla. Stat. § 1108.
63. Division of C.R.C.S. Guidelines, p. 14.
64. 10 Okla. Stat. § 1107 & 1108.
65. 10 Okla. Stat. § 1112(c); *Brown v. State*, 550 P.2d 963 (Okla., 1976).
66. 487 P.2d 47 (Alaska, 1971).
67. *Ibid.*, pp. 52-53.
68. Uniform Juvenile Court Act § 14 (1968).
69. *Kinney v. Lenon*, 425 F.2d 209 (1970).
70. *Baldwin v. Lewis*, 300 F.Supp 1220 (1969); *T.K. v. State*, 190 S.E.2d 588 (1972); *Cooley v. Stone*, 414 F.2d 1213 (1969).
71. Paulsen and Whitebread, *Juvenile Law & Procedure*, p. 120.
72. *Cooley v. Stone*, 414 F.2d 1213 (1969).
73. Division of C.R.C.S. Guidelines, p. 15.
74. *Crandali v. State*, 539 P.2d 398 (Oklahoma, 1975); *Lone Wolf v. State of Oklahoma and D.I.S.R.S.*, 470 P.2d 1014 (Oklahoma, 1970); 10 Okla. Stat. § 1103.
75. 10 Okla. Stat. § 1101.

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76. *Matter of D.S.H.*, 549 P.2d 826 (Oklahoma, 1976); *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976); *In re Napier*, 532 P.2d 423 (Oklahoma, 1975); *Lone Wolf v. State of Oklahoma and D.I.S.R.S.*, 470 P.2d 1014 (Oklahoma, 1970); *Okla. Stat. § 1103(b)*.
77. 10 *Okla. Stat. § 1104*; *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976).
78. 10 *Okla. Stat. § 1105*.
79. 10 *Okla. Stat. § 1101(f)*; 10 *Okla. Stat. § 1111*.
80. 10 *Okla. Stat. § 1101(g)*; 10 *Okla. Stat. 1115*; *Matter of B.J.*, 546 P.2d 1354 (Oklahoma, 1976).
81. *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976); *Crandall v. State*, 539 P.2d 398 (Oklahoma, 1975); *Lone Wolf v. State of Okla.* 470 P.2d 1014 (Oklahoma, 1970). Other jurisdictions: *State v. Sluder*, 463 P.2d 594 (Oregon, 1970), petition is adequate, if it is straight forward and concise enough to enable a person of ordinary understanding to know what is intended. *In re Wilson*, 264 A.2d 614 (1970), due process requires full notice; *Doe v. State*, 487 P.2d 47 (1971), notice inadequate if not timely; *Reed v. State*, 188 S.E.2d 392 (1972), concludes adequate notice must state the purpose of the hearing.
82. 10 *Okla. Stat. § 1103*; *Crandall v. State*, 539 P.2d 398 (Oklahoma, 1975).
83. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967).
84. 10 *Okla. Stat. § 1109(a)*; *J.T.P. v. State*, 544 P.2d 1270 (Oklahoma, 1975).
85. 10 *Okla. Stat. § 1109(b)*.
86. *In re Walker* 191 S.E.2d 702 (1972); *Barry v. Sigler*, 373 F.2d 835 (1976).
87. *Paulsen & Whitebread, Juvenile Law & Procedure*, p. 155; *Years v. State*, 476 P.2d 11 (Nevada, 1970), manifestation of bias must appear in the record; change of venue, *State v. Lake* *Juvenile Court* 228 N.E.2d 16 (1976); *in re A.*, 319 N.Y.S.2d 691 (1971), a judge may be disqualified for personal bias, but not for prior judicial exposure.
88. *Paulsen & Whitebread, Juvenile Law & Procedure*, p. 156.
89. 10 *Okla. Stat. § 1111*; *Sorrells v. Steele*, 506 P.2d 942 (Oklahoma, 1973).
90. 10 *Okla. Stat. § 1111*.
91. *Stratton v. Steele*, 519 P.2d 468 (Oklahoma, 1974).
92. 10 *Okla. Stat. § 1111*.
93. *Stratton v. Steele*, 519 P.2d 468 (Oklahoma, 1974).
94. *In re Gault*, 387 U.S. 1 (1967); 87 S.Ct. 1428.
95. *Sorrells v. Steele*, 506 P.2d 942 (Oklahoma, 1973).
96. *J.T.P. v. State*, 544 P.2d 1270 (Oklahoma, 1975).
97. *B.F. v. State*, 550 P.2d 991 (Oklahoma, 1976); *Smith v. State*, 525 P.2d 1251 (Oklahoma, 1974); *J.S., a Juvenile, v. State*, 47 OBAJ 2798.
98. *USCA Const. Amend. 6*; *Doe v. State*, 487 P.2d 47 (Alaska, 1971); *In re H.*, 96 Cal. Rept. 791 (1971); *In re Baum*, 506 P.2d 323 (Wash. App., 1973); *In re Sanders*, 96 NW.2d 218 (1959); *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105 (1974).
99. *In the Matter of Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970).
100. *J.T.P. v. State*, 544 P.2d 1270 (Oklahoma, 1975), certification requires substantial evidence.
101. 10 *Okla. Stat. § 1114*.
102. *Ibid.*, § 1137 & § 1138.
103. *Klopfert v. North Carolina*, 386 U.S. 213, 87 S.Ct. 988 (1967); *People v. Poland*, 255 N.Y.S.2d 5 (1964); *Pilland v. Clark County Juvenile Court Services*, 457 P.2d 523 (Nevada, 1969).
104. *In re Burrus*, 167, S.E.2d 454 (1969).
105. 10 *Okla. Stat. § 1111*.
106. *McKiever v. Pennsylvania*, 403 U.S. 528 (1971).
107. 10 *Okla. Stat. § 1110*.
108. 10 *Okla. Stat. § 1110* as amended by House Bill 1121.
109. *Alford v. Carter*, 504 P.1d 436 (Oklahoma, 1972); *Haskins v. Carter*, 506 P.2d 1391 (Oklahoma, 1973).
110. 10 *Okla. Stat. § 1115(a)*; *Matter of Reyna*, 546 P.2d 622 (Oklahoma, 1976).
111. *Kent v. United States*, 383 U.S. 541, 86 S.Ct. 1045 (1966).
112. *In re Dennis*, 244 N.Y.S.2d 798 (1963).
113. 10 *Okla. Stat. § 1115(a)*; *Sorrells v. Steele*, 506 P.2d 942 (Oklahoma, 1973).

114. 10 Okla. Stat. § 1115(b).
115. *Ibid.*, § 1116(a).
116. *Ibid.*, (1), such order shall remain in force for not more than one year, but it may be extended or renewed.
117. 10 Okla. Stat. § 1116(a)2.
118. 10 Okla. Stat. § 1116(2).
119. *Ibid.*, (3).
120. 10 Okla. Stat. § 1118.
121. 10 Okla. Stat. 1116(4).
122. In the Matter of F., 293 N.Y.S.2d 873 (1968); *Steinhauer v. State*, 206 So.2d 25 (Fla., 1968).
123. 10 Okla. Stat. § 1116(b).
124. *Ibid.*, § 1139(a).
125. *Ibid.*, (b).
126. *Lamb v. Brown*, 456 F.2d 18 (1972), Tenth Circuit.
127. 10 Okla. Stat. § 1139(a).
128. *Ibid.*
129. 10 Okla. Stat. § 1142.
130. *Ibid.*, § 1136.
131. *Creek v. Stone*, 379 F.2d 106 (1967).
132. Elizabeth W. Browne, *The Right To Treatment Under Civil Commitment* (Reno, Nevada: National Council of Juvenile Court Judges, 1975) p. 159.
133. 10 Okla. Stat. § 1127(a).
134. *Ibid.*, § 1125.
135. *Ibid.*, § 1127(a).
136. 10 Okla. Stat. § 1506.
137. *Ibid.*
138. In re *Patterson*, 499 P.2d 1131 (Kansas, 1972).
139. In re *Smith*, 249 N.Y.S.2d 1016 (1964).
140. Lindsay G. Arthur and William A. Gauger, *Disposition Hearings: The Heartbeat of the Juvenile Court* (Reno, Nevada: National Council of Juvenile Court Judges, 1974), pp. 12-15.
141. 10 Okla. Stat. § 1115(a); *Oklahoma* in accord with *Kent v. U.S.* 86 S.Ct. 1045, 383 U.S. 541 (1966).
142. *Sorrells v. Steele*, 506 P.2d 942 (Oklahoma, 1973); 10 Okla. Stat. § 1115(b).
143. McKinney's N.Y. Family Court Act § 746(b), "Such reports may not be furnished to the Court prior to the completion of the adjudicatory hearing, but may be used in a dispositional hearing."
144. In re *R.*, 464 P.2d 127 (California, 1970).
145. Division of C.R.C.S. Guidelines, p. 30.
146. Nicholas N. Kittrie, *The Right To Be Different* (Baltimore, Maryland: The Johns Hopkins University Press, 1976), p. 159.
147. 10 Okla. Stat. § 1112(b).
148. Sanford J. Fox, *Juvenile Courts in a Nut Shell* (St. Paul, Minn.: West Publishing Co., 1971), p. 226.
149. *Kent v. U.S.*, 86 S.Ct. 1045, 383 U.S. 541 (1966).
150. *JTP v. State*, 544 P.2d 1270 (Oklahoma, 1975); *Bruner v. Meyers*, 532 P.2d 458 (Oklahoma, 1975); *Sherfield v. State*, 511 P.2d 598 (Oklahoma, 1973).
151. *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976); *Crandall v. State*, 539 P.2d 398 (Oklahoma, 1975); *Lone Wolf v. State*, 470 P.2d 1014 (Oklahoma, 1970).
152. 10 Okla. Stat. § 1103(b).
153. 10 Okla. Stat. § 1112(b).
154. *Breed v. Jones*, 421 U.S. 519, 95 S. Ct. 1779 (1975).
155. *JTP v. State*, 544 P.2d 1270 (Oklahoma, 1975).
156. *Garrison v. Jennings*, 529 P.2d 536 (Oklahoma, 1974).
157. 10 Okla. Stat. § 1104; 10 Okla. Stat. § 1105; *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976); *Bruner v. Meyers*, 532 P.2d 458 (Oklahoma, 1975).

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158. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975).
159. 10 Okla. Stat. § 1112(c).
160. Schaffer v. Green, 496 P.2d 375 (Oklahoma, 1972); 10 Okla. Stat. § 1107(c).
161. 10 Okla. Stat. § 1107; § 1112(c).
162. Kent v. U.S. 86 S.Ct. 1045, 383 U.S. 541 (1966).
163. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975).
164. Kent v. U.S., 86 S.Ct. 1045, 383 U.S. 541 (1966). JTP v. State, 544 P.2d 1270 (Oklahoma, 1975).
165. Alford v. Carter, 504 P.2d 436 (Oklahoma 1972).
166. In the Matter of Gault, 546 P.2d 539 (Oklahoma, 1976); Calhoon v. State, 548 P.2d 1037 (Oklahoma, 1976).
167. 10 Okla. Stat. § 1112(b)5.
168. Matter of Smith, 548 P.2d 647 (Oklahoma, 1976); 10 Okla. Stat. § 1112(b)4; Sherfield v. State, 511 P.2d 598 (Oklahoma, 1973); Brown v. State, 550 P.2d 963 (Oklahoma, 1976).
169. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975).
170. In re Anonymous, 484 P.2d 235 (Arizona, 1971); Leach v. Superior Court, 98 Cal. Rptr. 687 (California, 1971); U.S. ex rel Walker v. Maroney, 444 F.2d 47 (3d Cir., 1971); People v. Smith, 192 NW 2d 666 (Michigan, 1971); Probable cause is presumed in Maryland and Oregon, In re Taporzycki, 287 A.2d 66 (1972); State ex rel Juvenile Dept. of Marion County v. Johnson, 501 P.2d 1011 (1972).
171. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975); DGB v. State, 549 P.2d 94 (Oklahoma, 1976).
172. 503 P.2d 1305 (Oklahoma, 1972).
173. Bruner v. Meyers, 532 P.2d 458 (Oklahoma, 1975).
174. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975); Sorrels v. Steele, 506 P.2d 942 (Oklahoma, 1973), states that, 'juvenile delinquency proceedings are to be conducted in accordance with the rules of evidence,' p. 943.
175. Kern v. State, 522 P.2d 644 (Oklahoma, 1974).
176. McFarlin v. State, 554 P.2d 56 (Oklahoma, 1976).
177. 10 Okla. Stat. § 1111.
178. McFarlin v. State, 554 P.2d 56 (Oklahoma, 1976); Salazar v. Rodriguez, 371 F.2d 726 (1967); Acuna v. Baker, 418 F.2d 639 (1969).
179. Layton v. State, 551 P.2d 270 (Oklahoma, 1976).
180. Neller v. State, 445 P.2d 949 (New Mexico, 1968).
181. Bryan v. Superior Court, 410 U.S. 944 (1973); Commonwealth v. Ronona, 228 A.2d 762 (1972).
182. Calhoon v. State, 548 P.2d 1037 (Oklahoma, 1976); Alford v. Carter, 504 P.2d 436 (Oklahoma, 1972); JTP v. State, 544 P.2d 1270 (Oklahoma, 1975); Terrell v. State, 551 P.2d 1143 (Oklahoma, 1976); State v. Valentine, 536 P.2d 1291 (Oklahoma, 1975); Schaffer v. Green, 496 P.2d 375 (Oklahoma, 1972).
183. Alaska, Maryland, New Jersey, Oklahoma and Texas.
184. 383 U.S. 541, 86 S.Ct. 1045 (1966).
185. 10 Okla. Stat. § 1112(b)1-8; Sherfield v. State, 511 P.2d 598 (Oklahoma, 1973); Hendrix v. State, 511 P.2d 598 (Oklahoma, 1973).
186. 496 P.2d 389 (Oklahoma, 1972).
187. People v. Fields, 199 NW 2d 217 (1972); wherein the Michigan transfer statute was held unconstitutional for lack of standards.
188. L. v. The Superior Court of Los Angeles County; 498 P.2d 1098 (California, 1972).
189. 10 Okla. Stat. § 1120(a).
190. Sherfield v. State, 511 P.2d 598 (Oklahoma, 1973); the knowledge of right from wrong need not be determined with relation to a specified age.
191. JTP v. State, 544 P.2d 1270 (Oklahoma, 1975); D.G.B. v. State, 549 P.2d 94 (Oklahoma, 1976); 'finding that a crime has been committed and probable cause to believe that the accused child committed it,' p. 96.

192. *Brown v. State*, 550 P.2d 963 (Oklahoma, 1976); *JTP v. State*, 544 P.2d 1270 (Oklahoma, 1975); *Calhoon v. State*, 548 P.2d 1037 (Oklahoma, 1976); *In the Matter of Smith*, 548 P.2d 647 (Oklahoma, 1976); *S.H. v. State*, 47 OBAJ 2433 (1976); there must be substantial evidence against the child's claim to the benefits of juvenile treatment.

193. *Calhoon v. State*, 548 P.2d 1037 (Oklahoma, 1976); *Bias v. State*, 48 OBAJ 483 (Oklahoma, 1977).

194. *Corbin v. United States*, 253 F.2d 646 (1958), 10th Circuit.

195. Division of C.R.C.S. Guidelines, pp. 20—21.

196. 10 Okla. Stat. § 1123A.

197. *Ibid.*

198. Rule 8.4 Oklahoma Court of Criminal Appeals; *State v. Valentine*, 536 P.2d 1291 (Oklahoma, 1975).

199. 10 Okla. Stat. § 1123B; *Matter of Cravatt*, 540 P.2d 1192 (Oklahoma, 1975).

200. 10 Okla. Stat. § 1123B.

201. *B.J. & V.G., Children Under 18 Years of Age*, 546 P.2d 1354 (Oklahoma, 1976) and *B.F. v. State*, 550 P.2d 991 (Oklahoma, 1976).

202. *T.L.B. v. Jennings*, 548 P.2d 1043 (Oklahoma, 1976).

203. *Griffin v. People of the State of Illinois*, 351 U.S. 12, 76 S.Ct. 585 (1956); *Kohl v. Lehlback*, 160 U.S. 293, 16 S.Ct. 304 (1895).

204. *Logsdon v. State*, 380 P.2d 111 (Oregon, 1963); *Wissenburg v. Bradley*, 229 NW 205 (1929).

205. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967).

206. *Jackson v. Huddleston*, 397 P.2d 132 (Oklahoma, 1964).

207. 10 Okla. Stat. § 1123A.

208. *Hall v. Florida Dept. of Public Welfare*, 226 So.2d 39 (1969); parents not a party could have appealed. *In re Miller*, 224 A.2d 89 (1966), the district attorney may always appeal. *In re Johnson*, 100 NW 2d 383 (1960), county welfare can appeal.

209. *In re D.L.F.*, 176 NW 2d 486 (1970).

210. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967).

211. *Chambers v. Dist. Court*, 152 NW 2d 818 (1967).

212. *A Juvenile Petitioner v. Joe Jennings*, District Judge, 541 P.2d 229 (Oklahoma, 1975).

213. *In re Gault*, 387 U.S. 1 (1967).

214. *Douglas v. People of State of Calif.*, 372 U.S. 353, 83 S.Ct. 814 (1963).

215. Division of C.R.C.S. Guidelines, p. 37.

216. *Ibid.*, p. 26.

217. *Ibid.*

*The material compiled under the heading of revocation has been taken in large measure from the Guidelines from the Court Related and Community Services Division of The Department.

218. *Ibid.*, p. 31.

219. 10 Okla. Stat. § 1109(a).